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# TEXAS REGISTER

*Volume 21, Number 48 June 28, 1996*

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***This month's front cover artwork:***

**Artist:** Wendy Phan

*11th grade*

*Clear Creek High School, Clear Creek ISD*

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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## Office of the Governor

THE STATE OF TEXAS EXECUTIVE DEPARTMENT  
OFFICE OF THE GOVERNOR AUSTIN, TEXAS EXECUTIVE ORDER GWB 96-8/Aransas

RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN ARANSAS COUNTY, TEXAS

WHEREAS, Aransas County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Aransas County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Aransas County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of

aerial fireworks, as defined above, in Aransas County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Aransas County has been terminated or this Order is sooner rescinded.

RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN ARCHER COUNTY, TEXAS

WHEREAS, Archer County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Archer County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Archer County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of

aerial fireworks, as defined above, in Archer County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Archer County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN ARMSTRONG COUNTY, TEXAS**

WHEREAS, Armstrong County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Armstrong County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Armstrong County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Armstrong County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Armstrong County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN AUSTIN COUNTY, TEXAS**

WHEREAS, Austin County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and

the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Austin County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Austin County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Austin County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Austin County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN BEE COUNTY, TEXAS**

WHEREAS, Bee County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Bee County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;



WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Bee County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Bee County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Bee County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN FOARD COUNTY, TEXAS

WHEREAS, Foard County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Foard County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Foard County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Foard County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Foard County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN CROCKETT COUNTY, TEXAS

WHEREAS, Crockett County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Crockett County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Crockett County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Crockett County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Crockett County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN FOARD COUNTY, TEXAS

WHEREAS, Foard County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Foard County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Foard County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Foard County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Foard County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN ELLIS COUNTY, TEXAS

WHEREAS, Ellis County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Ellis County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and

that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in H.B. 828, Chapter 500, 74th Legislature, Regular Session, incorporated herein by reference, plus Roman Candles; and

WHEREAS, the County Commissioners Court of Ellis County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and discharge of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Ellis County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Ellis County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN EL PASO COUNTY, TEXAS

WHEREAS, El Paso County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including El Paso County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, the County Commissioners Court of El Paso County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of all pyrotechnic devices other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks that have fins or rudders for the purpose of achieving aerodynamic flight, including devices that would be considered missiles or rockets and including devices that are commonly known as bottle rockets used for display and celebration in El Paso County, Texas, except for municipally sponsored or permitted fireworks

displays, until the State of Disaster in El Paso County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN UVALDE COUNTY, TEXAS**

WHEREAS, Uvalde County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Uvalde County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Uvalde County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Uvalde County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Uvalde County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN FORT BEND COUNTY, TEXAS**

WHEREAS, Fort Bend County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Fort Bend County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Fort Bend County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Fort Bend County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Fort Bend County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN BRAZORIA COUNTY, TEXAS**

WHEREAS, Brazoria County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Brazoria County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (

Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Brazoria County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Brazoria County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Brazoria County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN GRAY COUNTY, TEXAS

WHEREAS, Gray County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale; WHEREAS, the County Commissioner's Court of Gray County has previously requested the Governor to ban all fireworks;

WHEREAS, Gray County has recently had some rain, however, there still exists a serious threat of wildfire;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Gray County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Gray County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to amend his previous Order and to now impose a ban only on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of

aerial fireworks, as defined above, in Gray County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Gray County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN HARRIS COUNTY, TEXAS

WHEREAS, Harris County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Harris County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Harris County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Harris County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Harris County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN HEMPHILL COUNTY, TEXAS

WHEREAS, Hemphill County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and

the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Hemphill County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Hemphill County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Hemphill County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Hemphill County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN HENDERSON COUNTY, TEXAS

WHEREAS, Henderson County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Henderson County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Henderson County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Henderson County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN HOUSTON COUNTY, TEXAS

WHEREAS, Houston County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Houston County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Houston County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Houston County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Houston County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN HOWARD COUNTY, TEXAS**

WHEREAS, Howard County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Howard County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Howard County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Howard County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Howard County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN HUTCHINSON COUNTY, TEXAS**

WHEREAS, Hutchinson County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code,

hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Hutchinson County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Hutchinson County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Hutchinson County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Hutchinson County has been terminated or this Order is sooner rescinded.

**RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN JEFF DAVIS COUNTY, TEXAS**

WHEREAS, Jeff Davis County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Jeff Davis County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department

of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Jeff Davis County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of all fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Jeff Davis County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Jeff Davis County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN MARTIN COUNTY, TEXAS

WHEREAS, Martin County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Martin County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Martin County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Martin County, Texas, except for municipally sponsored or permitted fireworks displays, until the

State of Disaster in Martin County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN MATAGORDA COUNTY, TEXAS

WHEREAS, Matagorda County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Matagorda County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Matagorda County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Matagorda County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Matagorda County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN MIDLAND COUNTY, TEXAS

WHEREAS, Midland County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Midland County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Midland County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Midland County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Midland County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN OLDHAM COUNTY, TEXAS

WHEREAS, Oldham County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Oldham County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (

Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Oldham County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Oldham County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Oldham County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN RANDALL COUNTY, TEXAS

WHEREAS, Randall County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Randall County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Randall County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Randall County, Texas, except



for municipally sponsored or permitted fireworks displays, until the State of Disaster in Randall County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN REEVES COUNTY, TEXAS

WHEREAS, Reeves County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Reeves County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Reeves County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Reeves County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Reeves County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN SAN JACINTO COUNTY, TEXAS

WHEREAS, San Jacinto County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and

the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including San Jacinto County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in H.B. 828, Chapter 500, 74th Legislature, Regular Session, incorporated herein by reference, plus Roman Candles; and

WHEREAS, the County Commissioners Court of San Jacinto County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and discharge of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in San Jacinto County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in San Jacinto County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN BEE COUNTY, TEXAS

WHEREAS, Bee County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Bee County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (

Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Bee County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Bee County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Bee County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN VICTORIA COUNTY, TEXAS

WHEREAS, Victoria County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Victoria County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Victoria County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and discharge of fireworks and other pyrotechnic devices used for display and celebration in all areas of Victoria County outside of the city of Victoria other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of

aerial fireworks, as defined above, in Victoria County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Victoria County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN WALKER COUNTY, TEXAS

WHEREAS, Walker County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Walker County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Walker County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Walker County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Walker County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN WALKER COUNTY, TEXAS

WHEREAS, Walker County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and

the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Walker County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Walker County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Walker County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Walker County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN WALLER COUNTY, TEXAS

WHEREAS, Waller County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Waller County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Waller County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale, possession and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

NOW, THEREFORE, I GEORGE W. BUSH, GOVERNOR OF TEXAS, in accordance with the Plan, and by authority of the Act, do hereby prohibit the retail sales (sales to the public) and use of aerial fireworks, as defined above, in Waller County, Texas, except for municipally sponsored or permitted fireworks displays, until the State of Disaster in Waller County has been terminated or this Order is sooner rescinded.

#### RELATING TO A BAN ON THE SALE AND USE OF AERIAL FIREWORKS IN WHARTON COUNTY, TEXAS

WHEREAS, Wharton County is suffering from an extended drought that has caused local vegetation to become dry and flammable, thereby creating conditions that pose the threat of large, dangerous, and fast-moving wildfires which have the potential of endangering lives and damaging property on a large scale;

WHEREAS, the dim prospects of rainfall that would abate the drought, the magnitude of the danger for potential damage, and the speed at which such fires could escalate to major proportions constitute an imminent threat of greater disaster;

WHEREAS, in accordance with the provisions of the Texas Disaster Act of 1975 (Title 4, Chapter 418 of the Texas Government Code, hereinafter "Act") a State Emergency Management Plan has been adopted (hereinafter "Plan"), and in accordance therewith a State of Disaster has been declared for all 254 Texas counties, including Wharton County, based on the imminent threat of wildfire;

WHEREAS, the Texas State Fire Marshal believes that the use of aerial fireworks in conditions of severe drought presents the threat of wildfire and would constitute an imminent threat of disaster and that the properly supervised use of ground fireworks under current climatic conditions would not present a threat of imminent disaster;

WHEREAS, for purposes of this Executive Order, aerial fireworks are as defined in the American Pyrotechnics Association, Inc. Standard 87-1, April, 1993 Edition, as amended, Section 3.1.2 et seq. (Sections 3.1.2.1 through 3.1.2.5), adopted by the U.S. Department of Transportation and as attached hereto and incorporated herein by reference; and

WHEREAS, the County Commissioners Court of Wharton County, Texas, adopted an official Resolution requesting the Governor, pursuant to the authority granted to him in the Act and in accordance with the Plan, to impose a ban on the sale and use of aerial fireworks and other pyrotechnic devices used for display and celebration, other than municipally sponsored fireworks displays, until such time as no disaster from drought is imminent.

# ATTORNEY GENERAL

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Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

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## Requests and Opinions

**L096-043(ID# 34647).** Request from Johanna McCully-Bonner, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, concerning whether the term "organization" in Government Code, §2306.028 includes a city.

**Summary of Opinion.** Section 2306.028 of the Government Code disqualifies an individual from serving as a public member of the Department of Housing and Community Affairs if the individual is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department. The word "organization" in section 2306.028 of the Government Code, does not include a city, nor does it include governmental entities generally, such as political subdivisions, special districts, and state institutions of higher education.

Section 572.051 of the Government Code provides that a state officer should not accept other employment that might reasonably be expected to require or induce him or her to disclose confidential information acquired by reason of being an officer. Nor should a state officer accept other employment or compensation that could reasonably be expected to impair his or her independence of judgment in the performance of the officer's official duties. Whether a board member's acceptance of a particular employment would violate these provisions is a fact question, to be decided by the board in the first instance.

### **L096-044 (ID# 22504).**

Request from the Honorable Steven C. Hilbig, Bexar County Criminal District Attorney, 300 Dolorosa, Suite 5072, San Antonio, Texas 787205-3030, regarding whether the Bexar County Bail Bond Board is authorized to issue multiple licenses to an individual under V.T.C.S., Article 2372p-3.

**Summary of Opinion.** The Bexar County Bail Bond Board is not authorized to issue multiple licenses to an individual under V.T.C.S., Article 2372p-3.

**L096-045 (ID# 37383).** Request from Jack W. Garison, Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, concerning whether elevators in a facility that serves as the residence of members of a religious order are required to meet the requirements set forth in Health and Safety Code chapter 754, subchapter B, and related question.

**Summary of Opinion.** To the extent that the conclusion in Letter Opinion Number 94-096 encompasses elevators, escalators, and

related equipment in an industrial facility, the 1995 amendments to section 754.014 of the Health and Safety Code have superseded the letter opinion. We therefore modify the conclusion reached in Letter Opinion Number 94-096 as follows: Section 754.014 of the Health and Safety Code requires the commissioner of licensing and regulation to promulgate standards for the installation, alteration, operation, and inspection of all elevators designed to carry individuals in any commercial establishment, unless the building is "an industrial facility, . . . grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited principally to employees of or working in that facility or structure." The term "commercial establishment" in section 754.014(a)(2) thus does not encompass an industrial facility, nor does it encompass a private home.

An elevator in a residential facility, which facility a religious order operates for its members on a not-for-profit basis, is subject to the regulations the commissioner of licensing and regulation promulgates pursuant to section 754.014(a) of the Health and Safety Code if the facility is a commercial establishment. Generally, a residential facility is a commercial establishment if, pursuant to a contract, the residents pay a rental fee in exchange for their living space. Moreover, an elevator in a commercial establishment is subject to regulation only if the public uses the elevator.

**L096-046 (ID# 36043).** Request from Jack E. Crump, Executive Director, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas, 78701, regarding frequency of county jail inspections required of the Commission on Jail Standards under Government Code, §511.009

**Summary of Opinion.** Pursuant to §511.009(a)(11) of the Government Code, the Commission on Jail Standards must inspect each county jail once each twelve-month period. The commission need not inspect a county jail within 365 days of a previous inspection.

Section 511.009(a)(11) does not require the commission to adopt an inspection year that corresponds to the calendar year. The commission may adopt an inspection year that corresponds to a fiscal year.

**L096-047 (ID# 35255).** Request from Janie D. Fields, M.P.A., Executive Director, Children's Trust Fund of Texas Council, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas, 78757-6854, regarding whether the legislature may impose certain restrictions on expenditures of the Children's Trust Fund of Texas Council and related questions.

**Summary of Opinion.** The Children's Trust Fund of Texas Council, established by chapter 74 of the Human Resources Code, administers

a program of grants for prevention of child abuse and neglect. Funding for the council's work derives from marriage license fees dedicated by statute to the children's trust fund in the treasury and transferred from the trust fund to an operating fund for appropriation by the legislature. The legislature is not required to appropriate from the operating fund to the council the full amount of revenue that may be transferred to operating fund.

**LO96-048 (ID# 36115).** Request from Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning whether the board of trustees of an independent school district must hold both "open" and "closed" meetings within the boundaries of the district.

**Summary of Opinion.** Section 26.007(b) of the Education Code requires both open and closed meetings of a school district board of trustees to be held within the boundaries of the school district.

**LO96-049 (ID# 38147).** Request from the Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a city council member may vote or decide on a zoning matter regarding the subdivision in which the member resides.

**Summary of Opinion.** Under chapter 171 of the Local Government Code, a city council member may not vote or decide on a zoning matter regarding the subdivision in which the member owns a residence if it is reasonably foreseeable that the action on the matter will have a special economic effect on the value of the member's residence, distinguishable from its effect on the public.

**LO96-050 (ID# 38613).** Request from Rebecca E. Forkner, Executive Director, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450 Austin, Texas 78701, concerning duties of the Psychological Associate Advisory Committee to the State Board of Examiners of Psychologists.

**Summary of Opinion.** The Psychological Associate Advisory Committee is a part of the State Board of Examiners of Psychologists, and subject to that body's general rules and regulations. Its authority to recommend rules to the State Board of Examiners of Psychologists is limited to those areas concerning psychological associates expressly listed in section 19A(l) of article 4512, V.T.C.S. It has no authority to develop or recommend rules concerning any other persons regulated by the board.

**LO96-051 (ID# 37464).** Request from Kenneth H. Ashworth, Commissioner, Texas Higher Education, Coordinating Board, P.O. Box 12788, Austin, Texas 78711, concerning whether a community college may deduct outstanding cellular telephone charges from an employee's salary.

**Summary of Opinion.** Section 659.002(a) of the Government Code prohibits a community or junior college, such as Lee College, from contracting with an employee to allow the college to deduct from the employee's salary any outstanding cellular telephone charges that the employee may incur. Education Code section 22.002 authorizes a community college employee to assign an interest in his or her salary only for an existing indebtedness.

**LO96-052 (ID# 38812).** Request from the Honorable William R. Ratliff, Chair, Education Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the husband of the curriculum coordinator of the Upper Northeast Texas Tech Prep

Consortium may serve on the governing board of the Northeast Texas Community College District and related questions.

**Summary of Opinion.** Chapter 573 of the Government Code does not apply to a member of the governing board the Northeast Texas Community College District whose wife is the curriculum coordinator of the Upper Northeast Texas Tech Prep Consortium, of which the college district is a member, unless the governing board of the college district has the authority to hire the curriculum coordinator. Chapter 171 of the Local Government Code does not prevent the Tech Prep curriculum coordinator's husband from serving on the governing board of the college district.

**LO96-053 (ID# 38711).** Request from the Honorable Tim Cone, Criminal District Attorney, Upshur County Justice Center, 405 North Titus Street, Gilmer, Texas 75644, whether a lease-purchase agreement between a county and an appraisal district is governed by section 292.001 or chapter 263 and section 272.001 of the Local Government Code.

**Summary of Opinion.** A lease of a building that a county received by donation and does not use for county purposes is not a lease of excess county office space under Local Government Code section 292.001(c); the requirements of Local Government Code chapter 263 would apply, precluding the county from merely accepting an offer to lease or purchase the building. In addition, if the transaction constitutes a sale, the requirements of Local Government Code section 272.001 would apply.

**LO96-054 (ID# 38628).** Request from Helen Campbell, Fire Fighters' Pension Commissioner, 3910 South IH-35, Suite 235 Austin, Texas 78704, concerning whether a volunteer fire department may withdraw from the statewide volunteer fire fighters' pension system if the department does not intend to transfer its assets and liabilities from the pension system to another pension plan.

**Summary of Opinion.** A volunteer fire department may withdraw from the statewide pension system established under V.T.C.S., Article 6243e.3 only if the fire department has designated or created a separate pension plan to replace the statewide pension system. Of course, the fire department also must withdraw in accordance with a majority vote of its volunteer fire fighters and within five years of joining the statewide pension system.

**LO96-055 (ID# 36957).** Request from the Honorable Pete P. Gallego, Chair, General Investigating Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether the holder of a special parking permit for the disabled is entitled to free parking in airport parking lots and garages.

**Summary of Opinion.** Under Transportation Code section 681.006(b), a vehicle owner who displays a special parking permit for the disabled is exempt from paying a parking fee at an airport parking facility that a county, municipality, or joint board owns and operates, but only if a disabled individual is operating the vehicle or another person is operating the vehicle to transport a disabled individual. Additionally, a vehicle owner who displays a special parking permit for the disabled is exempt from paying a parking fee at an airport parking facility that a county, municipality, or joint board owns but that a third party operates under a contract with the governmental unit, but only if a disabled individual is operating the vehicle or another person is operating the vehicle to transport a disabled individual.

**LO96-056 (ID# 35216).** Request from the Honorable Steve Holzheuser, Chair, Energy Resources Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, request from whether an elected official must file the statement required by article XVI, section 1 of the Texas Constitution as a prerequisite to performing his duties of office.

**Summary of Opinion.** An elected officer who has not filed with the Secretary of State the signed statement required by article XVI, section 1(b) of the Texas Constitution may nonetheless be shown to be a de facto officer, whose acts the law validates with respect to third parties and the public. Whether the de facto doctrine will apply in a given case is a fact question. The proper remedy to question the authority of a de facto public official is a quo warranto proceeding brought in the name of the state.

**LO96-057 (ID# 38587).** Request from the Honorable Kenny Marchant, Chair, Committee on Financial Institutions, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a municipal hospital authority is authorized under chapter 262 of the Health and Safety Code to lease real property to a private entity to operate a bank, restaurant, or drugstore.

**Summary of Opinion.** Under chapter 262 of the Health and Safety Code, a municipal hospital authority may lease real property to a private entity to operate a bank, restaurant, or drugstore if the board determines that the establishment "is related or essential to the operation of a health facility or system" and is "necessary or convenient" for the hospital. The lease must also comport with article III, section 52 of the Texas Constitution.

**LO96-058 (ID# 36466).** Request from David R. Smith, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, regarding whether various testing committees or other entities that approve the contents of a licensing examination may meet in executive session to discuss test questions and answers.

**Summary of Opinion.** Testing committees of the Department of Health that review and approve the contents of licensing examinations are not authorized to meet in executive session under the Open Meetings Act, Government Code, chapter 551, to discuss test questions and answers.

**LO96-059 ID# (37779).** Request from the Honorable Ron Wilson, Chair, House Committee on Licensing and Administrative Procedures, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the offense of criminal trespass, Penal Code section 30.05, may be committed on a bus.

**Summary of Opinion.** The offense of criminal trespass, as described in section 30.05, Penal Code, may not be committed on a bus.

**LO96-060 (ID# 37938).** Request from the Honorable James M. Kuboviak, Brazos County Attorney, 300 East 26th, Suite 325, Bryan, Texas 77803, concerning whether the district and statutory county courts of Brazos County may utilize a centralized filing system for misdemeanor cases, so that the county attorney may file a misdemeanor case to be tried in either the district or a statutory county court with the county clerk.

**Summary of Opinion.** Government Code, section 25.0232(g) precludes the county clerk of Brazos County from accepting for filing misdemeanor cases over which the statutory county courts and the

district court have concurrent jurisdiction. Rather, only the district clerk may accept for filing these misdemeanor cases.

**LO96-060 (ID# 37938).** Request from the Honorable James M. Kuboviak, Brazos County Attorney, 300 East 26th, Suite 325 Bryan, Texas 77803, concerning whether the district and statutory county courts of Brazos County may utilize a centralized filing system for misdemeanor cases, so that the county attorney may file a misdemeanor case to be tried in either the district or a statutory county court with the county clerk.

**Summary of Opinion.** Government Code, section 25.0232(g) precludes the county clerk of Brazos County from accepting for filing misdemeanor cases over which the statutory county courts and the district court have concurrent jurisdiction. Rather, only the district clerk may accept for filing these misdemeanor cases.

**LO96-061 (ID# 38145).** Request from the Honorable Senfronia Thompson, Chair, Committee on Judicial Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a municipal utility district board member becomes ineligible to serve on the board if during the board member's term he or she no longer owns property in the district or is no longer a registered voter in the district.

**Summary of Opinion.** Water Code section 54.102 lists qualifications a director of a municipal utility district must satisfy throughout the term of service on the board. A director who, during the term of office, divests him- or herself of an ownership interest in land subject to taxation in the district is no longer qualified to serve on the municipal utility district board so long as the director also may not vote in the district. Likewise, a director who owns no property in the district and who, during the term of office, loses the right to vote in the municipal utility district is no longer qualified to serve on the district's governing board. In both circumstances, the director automatically vacates his or her position on the board.

Whether a particular member of a municipal utility district's governing board owns property that is subject to taxation in the district is a question of fact.

**LO96-062 (ID# 36358).** Request from the Honorable Harvey Hilderbran, Chair, Human Services Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a church is entitled to an exemption from ad valorem taxes on property that it purchases in the middle of the tax year.

**Summary of Opinion.** Section 11.42(a) of the Tax Code requires a property owner and the real property in issue to be qualified for a tax exemption on January 1 of a tax year if the property is to be exempt from ad valorem taxation. A mid-year transfer of real property from a nonexempt owner to an exempt owner does not alter the taxable character of the property during that tax year unless other law explicitly provides to the contrary. Consequently, where a religious organization has purchased real property in May, the religious organization is liable for ad valorem taxes that accrue from May through December.

Issued in Austin, Texas, on June 19, 1996.

9608821

Suzanne Marshall

Special Assistant

Office of the Attorney General

Filed: June 19, 1996

# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## **TITLE 43. TRANSPORTATION**

### **Part I. Texas Department of Transportation**

#### **Chapter 1. Management**

##### **Advisory Committees**

##### **43 TAC §1.85**

The Texas Department of Transportation adopts on an emergency basis an amendment to §1.85, concerning department advisory committees.

Transportation Code, §203.002, authorizes the Texas Transportation Commission to lay out, construct, maintain, and operate a modern state highway system. Transportation Code, Chapter 223 requires the department to submit for competitive bids each contract for the improvement of a highway that is part of the state highway system, or materials to be used in the construction or maintenance of that highway. Transportation Code, §223.007, provides that the commission shall prescribe the form of a highway improvement contract.

The department's preliminary internal assessment of the state's transportation needs for 1997-2006 has revealed that current funding levels will result in substantial deterioration of the state highway system's pavement quality, bridges, and urban mobility.

The Texas Sunset Advisory Commission's 1996 Staff Report on the department identified a funding crisis for highway system improvements that endangers the department's ability to address its responsibilities under Transportation Code, §203.002.

Texas Civil Statutes, Article 6252-33, provide that a state agency which is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency.

The Transportation Systems Efficiency Advisory Committee will provide a mechanism for the department and the commission to solicit input from the private sector in identifying innovative methods to reduce department costs in the construction and maintenance of the state highway system, thereby providing some relief to the funding crisis.

It is necessary to adopt this amendment to §1.85 on an emergency basis to provide an immediate response to the funding crisis which endangers the safety of the traveling public.

The amendment is adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6252-33, which provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency.

*§1.85. Department Advisory Committees.*

(a) Creation.

(1)-(17) (No change.)

##### **(18) Transportation Systems Efficiency Advisory Committee.**

**(A) Purpose.** The Transportation Systems Efficiency Advisory Committee recommends specific actions to reduce the costs of constructing, reconstructing, and maintaining the state highway system without sacrificing the quality or safety of the state highway system and its operation. The recommended actions shall reduce costs either through direct cost reduction, or indirectly through practices that might lead to longer-term reduction of maintenance costs or the extension of expected life cycles of department projects.

**(B) Duties.** The committee shall recommend cost-saving actions relating to:

- (i) the acquisition and use of equipment;
- (ii) the quality of roadway material;
- (iii) the design of state highway improvements and the preparation of plans, specifications, and estimates;
- (iv) contracting procedures; and
- (v) other actions which would result in a cost-saving to the taxpayers.

**(C) Manner of reporting.** The committee shall report its recommendations to the executive director who will submit the report with staff recommendations to the commission.

**(D) Duration. The committee is abolished upon submittal of its final recommendations to the executive director.**

(b)-(c) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608764

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: June 18, 1996

Expiration date: October 17, 1996

For further information, please call: (512) 463-8630

## Chapter 21. Right of Way

### Control of Outdoor Advertising Signs

#### 43 TAC §§21.142, 21.146, 21.150

The Texas Department of Transportation adopts on an emergency basis amendments to §§21.142, 21.146, and 21.150, concerning definitions, signs controlled, and permits, which relate to control of outdoor advertising signs.

The National Highway System Designation Act of 1995 which was passed on November 28, 1995, amended Title 23, United States Code, §101 to provide for the designation of the national highway system and for other purposes.

Title 23, United States Code, §131 requires the states to control outdoor advertising along the interstate and primary systems. Section 131(t) defines the primary system for purposes of the Federal Highway Beautification Act as the primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the national highway system.

Transportation Code, Chapter 391, previously codified at Texas Civil Statutes, Article 4477-9a (the "Highway Beautification Act"), provides the department with authority to control outdoor signs on the interstate or primary system of highways.

The amendment to §21.142 modifies the definition of federal-aid primary highway to include those highways on the National Highway System as defined under Title 23, United States Code, §103(b) and those highways on the primary system as of June 1, 1991. The amendment also adds a definition for National Highway System.

The amendment to §21.146 allows the department to permit legally erected signs along highways which were not previously subject to the department's jurisdiction under the State Highway Beautification Act but which were later added to the interstate or primary system.

The amendment to §21.150 allows the department to convert a sign registration or permit issued under §21.431 or §21.441, relating to Control of Signs Along Rural Roads, to a permit for a sign under the State Highway Beautification Act. The holder of a converted permit will not be required to pay an initial permit fee; however, the holder will be required to pay annual renewal fees.

It is necessary to adopt these new sections on an emergency basis in order to comply with the Federal Highway Beautification Act and to minimize the potential for nonconforming signs to be erected in areas which will be regulated by the department upon approval of these amendments.

The amendments are adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Transportation Code, §391.065, which authorizes the commission to adopt rules to regulate the erection and maintenance of outdoor advertising signs along the interstate and primary system of highways.

#### §21.142. Definitions.

The following words and terms, when used in this **undesignated head** [chapter], shall have the following meanings, unless the context clearly indicates otherwise.

[Federal-aid primary highway system- That portion of connected main highways located within the State of Texas which now or hereafter may be so designated officially by the Texas Transportation Commission and approved pursuant to 23 United States Code §103.]

**National Highway System - That portion of connected main highways located within the State of Texas which now or hereafter may be so designated officially by the commission and approved pursuant to 23 United States Code §103.**

**Primary system or federal-aid primary system - That portion of connected main highways which were designated by the commission as the federal-aid primary system in existence on June 1, 1991 and any highway which is not on such system but which is on the National Highway System.**

#### §21.146. Signs Controlled.

(a) No outdoor advertising sign which is visible from the main traveled way of a highway which is a part of the interstate or federal-aid primary systems may be erected or maintained along an interstate or federal-aid primary highway except in accordance with these sections unless such sign was in place prior to the time the location along such highway first became subject to control under the highway beautification laws. **A permit must be obtained and renewed annually in order to maintain any sign, including a sign in existence prior to such time as the highway along which it is located became subject to the Act.**

(b) (No change.)

#### §21.150. Permits.

(a) Eligibility. Except as provided in subsection (k) of this section, a permit under this section may only be issued to a sign owner holding a valid license issued pursuant to §21.149 of this title (relating to Licenses).

(b) Application and issuance.

(1)-(3) (No change.)

(4) If approved, a copy of the application, endorsed by the district engineer, or his or her designee, and a Texas sign permit plate will be issued to the applicant. Not later than 30 days after erection of the permitted sign, **or after the issuance of a permit if the sign is lawfully in existence when the highway along which it**

is located becomes subject to control by the department, the sign owner shall cause the permit plate to be securely attached to that portion of the sign structure nearest the highway and visible from the main traveled way.

(c)-(k) (No change.)

(l) **Conversion of rural road permits and registrations.** The department will convert a registration issued under §21.431 of this title (relating to Registration of Existing Off-Premise Signs) or a permit issued under §21.441 of this title (relating to Permit for Erection of Off-Premise Sign) to a permit under this section if a highway previously controlled in accordance with Transportation Code, Chapter 394 becomes subject to control under the Act. A holder of a permit or registration converted under this subsection will not be required to pay an original permit fee under subsection(c)(A) of this section; however, the permit must be renewed annually under subsection (c)(B) of this section. In the event a sign owner has prepaid registration fees,

**the outstanding prepayment will be credited to the sign owner's annual renewal fee.**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608765

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: June 18, 1996

Expiration date: October 17, 1996

For further information, please call: (512) 463-8630

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# PROPOSED RULES

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Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## TITLE 4. AGRICULTURE

### Part II. Texas Animal Health Commission

#### Chapter 43. Tuberculosis

##### Subchapter A. Cattle

###### 4 TAC §43.2

The Texas Animal Health Commission proposes amendments to Chapter 43, Tuberculosis, by amending §43.2, interstate movement requirements.

The proposed amendments are necessary in §43.2(c) to provide for the movement of sexually intact cattle from a foreign country to a designated pen as well as to a quarantined feedlot and provide that movements to either destination be direct in a sealed truck and accompanied by a VS 1-27 permit with "S" branding required either prior to or on arrival.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to provide uniformity and clarity in the regulation while assuring industry that sexually intact cattle exempt from post-entry test requirements arrive at quarantined destination with the least inconvenience to the producer.

Comments on the proposal may be submitted to Melissa Nitsche, Executive Secretary, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapters 161 and 162 which provides the Commission with the authority to protect livestock against communicable diseases, including tuberculosis.

The amendment implements the Agriculture Code, §§161.081 and 162.003 which authorize the Commission to adopt necessary rules to regulate the movement of livestock into the state and to prescribe the manner, method, and system of tuberculosis testing. No other code or article is affected by these amendments.

###### §43.2. Interstate Movement Requirements.

(a)-(b) (no change.)

(c) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status:

(1) To be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot **or designated pen**, shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed at the owner's expense; or,

(2) When destined for feeding for slaughter in a quarantined feedlot **or designated pen**, sexually intact cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; **moved directly to the quarantined feedlot or designated pen only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.** [These cattle may be moved to the quarantined feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel and shall be "S" branded upon arrival at the feedlot.]

(d)-(g) (no change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on June 18, 1996.

TRD-9608748

Terry L. Beals, DVM

Executive Director

Texas Animal Health Commission

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 719-0714

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits a proposed amendment to §29.609, a repeal of §29.610, and a new §29.610, concerning disproportionate share hospitals. Specifically, the repeal,

amendment, and new section are being proposed to comply further with requirements established in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and to comply with the recently approved state plan amendment, which covers OBRA '93. The proposal also revises the reimbursement methodology for state mental and chest hospitals. The department has revised its rules to specify when and how the state determines the available funds and to add definitions of the available funds. These definitions clarify that there are three available funds.

Mr. Joe Moritz, health care financing budget director, has determined that for the first five-year period the proposed sections will be in effect there will be minimal, if any, fiscal implication for state or local governments as a result of enforcing or administering the sections.

Mr. Moritz also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the continuation, according to federal directives, of reimbursing hospitals that provide a disproportionate share of indigent care. There is no anticipated economic cost to small or large businesses or individuals who are required to comply with the proposed sections. There is no anticipated effect on local employment.

Comments on the proposal may be sent to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

## Subchapter G. Hospital Services

### 25 TAC §29.609

The amendment, repeal, and new section are proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The amendment, repeal, and new section affect Chapter 32 of the Human Resources Code.

§29.609. *Additional Reimbursement to Disproportionate Share Hospitals.*

(a) (No change.)

(b) Definitions. For purposes of this section, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Bad debt charges - **Bad debt charges are uncollectible inpatient and outpatient charges that result from the extension of credit. Bad debt charges are used in the calculation of charges attributed to uninsured patients as defined in paragraph (5) of this subsection, and are used only in the limited circumstances described in subsection (f)(2)(D)(iv) of this section.** [Charges resulting from extensions of credit.]

(3) (No change.)

(4) Charity charges - **Charity charges are the total amount of hospital charges for inpatient and outpatient services attributed to charity care in a cost reporting period. These charges do not include bad debt charges, contractual allowances or discounts (other than for indigent patients not eligible for medical assistance under the approved Medicaid state plan); that is, reductions or discounts in charges given to other third party payers such as, but not limited to, health maintenance organizations, Medicare, or Blue Cross. Charity charges are used in the calculation of charges attributed to uninsured patients as defined in paragraph (5) of this subsection, only in the limited circumstances described in subsection (f)(2)(D)(iv) of this section.** [(excluding bad debt charges) - Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a cost reporting period. The total inpatient and outpatient charity charges attributable to charity care do not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as, but not limited to, Health Maintenance Organizations (HMOs), Medicare, or Blue Cross.] The amount of total charity charges must be consistent with the amount reported on the Texas Department of Health's (department) annual hospital survey.

(5) Cost of services - **Cost of services to uninsured patients are the inpatient and outpatient charges to patients who have no health insurance or other source of third party payment for services provided during the year, multiplied by the hospital's ratio of costs to charges (inpatient and outpatient), less the amount of payments made by or on behalf of those patients. Uninsured patients are patients who have no health insurance or other source of third party payments for services provided during the year. Uninsured patients include those patients who do not possess health insurance that would apply to the service for which the individual sought treatment.** [The cost of services provided by a hospital to patients who have no health insurance or source of third party payment for services provided during the hospital's latest fiscal year, less the amount of payments made by these patients.]

(6)-(10) (No change.)

(11) Hospital specific limit - The sum of the following two measurements:

(A) (No change.)

(B) cost of services **to uninsured patients** .

(12)-(14) (No change.)

(15) Medicaid inpatient utilization rate - **Medicaid inpatient utilization rate is the fraction expressed as a percentage, the numerator of which is the hospital's number of inpatient days attributable to patients who (for these days) were eligible for medical assistance under a state plan, and the denominator of which is the total number of the hospital's inpatient days in that period. The term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.** [A hospital's number of inpatient days attributable to patients who for these days were eligible for Medical Assistance under the State Plan divided by a hospital's total inpatient days.]

(16)-(18) (No change.)

(19) Payments received - **Payments received from uninsured patients are those payments received from or on behalf of uninsured patients as defined in paragraph (5) of this subsection.** [Payments received by a hospital from patients who have no health insurance or source of third party payment for services provided during the hospital's latest fiscal year.]

(20)-(21) (No change.)

(22) Total inpatient charity charges [(excluding bad debt charges)] - **Total inpatient charity charges, excluding bad debt charges, means the total amount of the hospital's charges for inpatient hospital services attributed to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period. The total inpatient charges attributable to charity care does [will] not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as but not limited to HMOs, Medicare, or Blue Cross. The amount of total inpatient charity charges must be consistent with the amount reported on the department's annual hospital survey.**

(23) Total Medicaid inpatient days - **Total Medicaid inpatient days means the total number of billed Title XIX inpatient days based on the latest available state fiscal year data for patients eligible for Title XIX benefits. Total Medicaid inpatient days includes days that were denied payment for reasons other than eligibility. Included are inpatient days of care provided to patients eligible for Medicaid at the time the service was provided, regardless of whether the claim was paid. These denied claims include, but are not limited to, claims for patients whose spell of illness limits are exhausted, or claims that were filed late. The term excludes days attributable to Medicaid patients between the ages of 21 and 65 who live in an institution for mental diseases. The term includes days attributable to individuals eligible for Medicaid in other states.** Total Medicaid inpatient days includes days with dates of admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for nine months after the end of the fiscal year (May 31). [Total Medicaid inpatient days include days that were denied for reasons other than eligibility. Total Medicaid inpatient days also include days attributable to individuals eligible for Medicaid in other states.]

(24) - (29) (No change.)

(30) **Available fund (state mental and chest hospitals) - Available fund for state mental and chest hospitals is the sum of 100 percent of their adjusted hospital specific limits.**

(31) **Available fund (remaining hospitals) - Available fund for hospitals other than mental and chest hospitals is the total federal fiscal year cap (state disproportionate share hospital allotment) minus the available fund for state teaching hospitals minus the available fund for state mental and chest hospitals.**

(c)-(e) (No change.)

(f) Reimbursing Medicaid disproportionate share hospitals. The single state agency shall reimburse Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month

period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. **Before the start of the next state fiscal year, the single state agency determines the size of the available funds to reimburse disproportionate share hospitals for the next state fiscal year, which begins each September 1. The funds available to reimburse the state chest hospitals and state mental hospitals equal the total of their adjusted hospital specific limits. The available fund for the remaining hospitals equals the lesser of the funds remaining in the state's annual disproportionate share hospital allotment or the sum of qualifying hospitals' adjusted hospital specific limits.** Payments shall [will] be made in the following manner, unless the state determines the hospital's proposed reimbursement has exceeded its specific limit.[:]

(1) A state chest hospital (facility of the Texas Department of Health) or a state mental hospital (facility of the Texas Department of Mental Health and Mental Retardation) that meets the requirements for disproportionate share status and provides inpatient psychiatric care or inpatient hospital services **receives** [will receive] annually [up to] 100 percent of **its adjusted hospital specific limit.** [the hospital's net operating costs, which are the total operating costs, less Medicaid payments (other than disproportionate share adjustments), less all funding from nonstate and nonlocal government sources for services provided in the particular hospital's fiscal year. The percentage will be determined by the ratio of funds available under the annual state disproportionate share hospital allotment to the net operating costs (up to 100 percent), after annual payment amounts to all other disproportionate share hospitals are deducted from the total annual allotment.]

(2) For the remaining hospitals, payments will be based on both weighted inpatient Medicaid days and weighted low income days. The **department weighs** [single state agency shall weigh] each hospital's total inpatient Medicaid days and low income days by the appropriate weighing factor. The **department** [state] defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs shall receive weights based proportionally on the MSA population according to the 1990 United States census. MSAs with populations greater than or equal to 150,000, according to the 1990 census, are considered as the "largest MSAs." Children's hospitals also shall receive weights because of the special nature of the services they provide. All other hospitals receive weighing factors of 1.0. The inpatient Medicaid days of each hospital shall be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund shall be divided into two parts. Two-thirds of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days. One-third of the available fund will reimburse each qualifying hospital by its percent of the total low income days. Reimbursement for the remaining hospitals is determined monthly as follows.

(A)-(C) (No change.)

(D) **The department or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (b)(16) of this section, and its cost of services to uninsured patients, as defined in subsection (b)(5) of this section,**

multiplied by the appropriate inflation update factor, as provided for in subsection (g)(2)(E) of this section.

(i) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payment made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. See subsection (b)(16) of this section for definition of "Medicaid shortfall."

(ii) The total Medicaid billed charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The department or its designee determines that ratio by using the hospital's Form HCFA 2552-92, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The department or its designee uses the latest available Medicare cost report in the absence of the Medicare cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the department or its designee uses the total cost from the HCFA 2552-92, Worksheet B, Part I, Column 25, and total charges from the HCFA 2552-92, Worksheet C Part I, Column 6. The ratio is the total cost divided by the total gross patient charges.

(iii) The department or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the fiscal year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges from reporting hospitals are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(iv) Hospitals that do not respond to the survey, or that are unable to determine accurately the charges attributed to patients without insurance, shall have their bad debt charges as defined in subsection (b)(2) of this section, and their charity charges as defined in subsection (b)(4) of this section, reduced by a percentage derived from a representative sample of hospitals to be determined annually by the department or its designee. The department derives the percentages using the following formula; for each specific category of hospitals listed in clause (v) of this subparagraph, the department sums the total amount of charges for patients without health insurance or other third party payments. For each specific category of hospitals listed in clause (v) of this subparagraph, the department sums the charity and bad debt charges. For each specific category of hospitals listed in clause (v) of this subparagraph, the department then divides the charges for patients without health insurance or other third party payments by the sum of charity and bad debt charges. The department then uses the resulting ratio for each specific category of hospitals listed in clause (v) of this subparagraph in the following manner. Individual hospitals that do not respond to the survey, or that are unable to accurately determine the charges attributed to patients without insurance have their hospital's individual sum of bad debt and charity charges multiplied by the appropriate ratio for the specific hospital category. After the department has calculated a value for the charges for patients

without health insurance or other source of third party payment for each individual hospital, the department multiplies each hospital's calculated value by that hospital's cost-to-charge ratio (inpatient and outpatient) to obtain the proxy cost of services delivered to uninsured patients at each hospital.

(v) The representative sample of hospitals is one of the following specific categories of hospitals: urban public, other urban, rural, state-operated psychiatric and nonstate psychiatric. In the event that less than 20 percent of the hospitals in a specific category provide data to the department, the department or its designee uses the overall ratio calculated for all responding hospitals. The department or its designee creates additional categories, by submitting a state plan amendment, as it deems appropriate for the economic and efficient operation of the Medicaid disproportionate share hospital program.

(vi) After the department or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the department subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

[(D) The department or its designee shall determine the adjusted hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall and its cost of services provided to patients who have no health insurance or source of third party payment for services provided during the year, multiplied by the appropriate inflation update factor.]

[(i) The department or its designee shall determine the Medicaid shortfall for each hospital, using the appropriate part of the hospital's Medicare cost report submitted for the fiscal year ending in the previous calendar year. The department also shall use claims denied for reasons other than eligibility to determine the Medicaid shortfall. These denied claims are for the hospital's fiscal year ending in the previous calendar year.]

[(ii) The department or its designee shall determine the cost of services to the uninsured for each hospital. Hospitals shall be surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. Hospitals that do not respond to the survey, or that are unable to determine accurately the charges attributed to patients without insurance, shall have their inpatient and outpatient bad debt and charity charges, as reported to the department in its Annual Hospital Survey, reduced by a percentage derived from a representative sample of similar hospitals to be determined annually by the department or its designee. The representative sample of hospitals shall be one of the following specific categories of hospitals: urban public, other urban, rural, and psychiatric. The state or its designee may create additional categories as it deems appropriate for the economic and efficient operation of the Medicaid disproportionate share hospital program. After the department has identified the charges for each hospital that can be attributed to patients without insurance, or other third party resources, the department shall multiply those charges by each hospital's cost-to-charge ratio.]

[(iii) After the department or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payment



for services provided during the year, the state shall subtract from each hospital's cost of these services the amount of payments made by those patients who have no health insurance or source of third party payment for services provided during the year.]

(E)[(iv)] The department or its designee shall trend each hospital's "hospital specific limit" calculated from its historical base period cost report to the state's fiscal year disproportionate share program. For hospitals without a full 12-month fiscal year cost report, the **department** [state] or its designee shall convert their costs to annualized hospital specific limits. The department or its designee shall use the inflation rates described in §29.606(n)(2) of this title (**relating to Reimbursement Methodology for Inpatient Hospital Services**) to calculate the inflation update factor used in the adjusted hospital specific limit. The department or its designee shall calculate the number of months from the mid-point of the hospital's cost reporting period to the mid-point of the state fiscal year disproportionate share program. The department or its designee shall then multiply the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations shall be multiplied by each hospital's "hospital specific limit" to obtain each hospital's "adjusted hospital specific limit."

[(E)] The state compares the projected payment for each disproportionate share hospital with its hospital specific limit. If a hospital's calculated payment is less than its limit, the state will reimburse the calculated payment to the hospital, plus its percentage of any additional available funds, not to exceed the hospital's specific limit. If the calculated payment is greater than the limit, the state will reduce the hospital's payment to equal its limit.]

(F) The department or its designee compares the projected payment for each disproportionate share hospital, as determined by subsections (d) and (e) of this section, with its adjusted hospital specific limit, as determined by subparagraphs (D) and (E) of this paragraph. If the hospital's projected payment is greater than its adjusted hospital specific limit, the department or its designee reduces the hospital's payment to its adjusted hospital specific limit.

(G) If there are disproportionate share hospital funds left in the available fund for the remaining hospitals, because some hospitals have had their disproportionate share hospital payments reduced to their adjusted hospital specific limits, the department distributes the excess funds according to the provisions in this section. For hospitals whose projected disproportionate share hospital payments are less than their adjusted hospital specific limits, the department or its designee does the following:

(i) calculate the difference between its adjusted hospital specific limit and its projected disproportionate share hospital payment;

(ii) add all of the differences from clause (i) of this subparagraph;

(iii) calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum for clause (ii) of this subparagraph; and

(iv) multiply the ratio from clause (iii) of this subparagraph; by the remaining available fund.

#### Figure 1: 25 TAC §29.609(f)(2)(G)(iv)

(H) Only those hospitals that are below their adjusted hospital specific limits are eligible to participate in this distribution. The disproportionate share hospital funds remaining in the available fund are distributed to the hospitals that have not already reached their adjusted hospital specific limits. Each hospital's total disproportionate share payment (including the redistribution of excess funds) cannot exceed its adjusted hospital specific limit.

(g)-(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608609

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: July 26, 1996

For further information, please call: (512) 458-7236

#### 25 TAC §29.610

The amendment, repeal, and new section are proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The amendment, repeal, and new section affect Chapter 32 of the Human Resources Code.

§29.610. *Disproportionate Share Hospital Reimbursement Methodology for State-owned Teaching Hospitals.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg

General Counsel

Texas Department of Health

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The amendment, repeal, and new section are proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with

the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The amendment, repeal, and new section affect Chapter 32 of the Human Resources Code.

*§29.610. Disproportionate Share Hospital Reimbursement Methodology.*

(a) A hospital owned and operated by a state university or other agency of the state is eligible for disproportionate share reimbursement. A state-owned teaching hospital is a hospital owned and operated by a state university or other agency of the state.

(b) Each hospital must have a Medicaid inpatient utilization rate defined at a minimum of one percent.

(c) To qualify for disproportionate share payments, each hospital must have at least two physicians (M.D. or D.O.), with staff privileges at the hospital, who have agreed to provide nonemergency obstetrical services to Medicaid clients. The two-physician requirement does not apply to hospitals whose inpatients are predominantly under 18 years old or that did not offer nonemergency obstetrical services to the general population as of December 22, 1987.

(d) For purposes of this section, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Total Medicaid inpatient days - Total Medicaid inpatient days means the total number of billed Title XIX inpatient days based on the latest available state fiscal year data for patients eligible for Title XIX benefits. Total Medicaid inpatient days includes days that were denied payment for reasons other than eligibility. Included are inpatient days of care provided to patients eligible for Medicaid at the time the service was provided, regardless of whether the claim was paid. These denied claims include, but are not limited to, claims for patients whose spell of illness limits are exhausted, or claims that were filed late. The term excludes days attributable to Medicaid patients between the ages of 21 and 65 who live in an institution for mental diseases. The term includes days attributable to individuals eligible for Medicaid in other states.

(2) Total inpatient census days - Total inpatient census days means the total number of a hospital's inpatient census days during its fiscal year ending in the previous calendar year.

(3) Cost of services - Cost of services to uninsured patients is the inpatient and outpatient charges to patients who have no health insurance or other source of third party payment for services provided during the year, multiplied by the hospital's ratio of costs to charges (inpatient and outpatient), less the amount of payments made by or on behalf of those patients. Uninsured patients are patients who have no health insurance or other source of third party payments for services provided during the year. Uninsured patients include those patients who do not possess health insurance that would apply to the service for which the individual sought treatment. Cost of services does not include any bad debt charges.

(4) Hospital specific limit - Hospital specific limit is the sum of the following two measurements: Medicaid shortfall; and cost of services to uninsured patients.

(5) Medicaid shortfall - Medicaid shortfall is the cost of services (inpatient and outpatient) furnished to Medicaid patients, less

the amount paid under the nondisproportionate share hospital payment method under this state plan.

(6) Cost-to-charge ratio (inpatient and outpatient) - Cost-to-charge ratio is the hospital's overall cost-to-charge ratio, as determined from its Medicare cost report submitted for the fiscal year ending in the previous calendar year. The latest available Medicare cost report is used in the absence of the cost report for the hospital's fiscal year ending in the previous calendar year.

(7) Adjusted hospital specific limit - Adjusted hospital specific limit is a hospital specific limit trended forward to account for the inflation update factor since the base year.

(8) Inflation update factor - Inflation update factor is a general increase in prices as determined by the department.

(9) Medicaid inpatient utilization rate - Medicaid inpatient utilization rate is the fraction expressed as a percentage, the numerator of which is the hospital's number of inpatient days attributable to patients who (for these days) were eligible for medical assistance under a state plan, and the denominator of which is the total number of the hospital's inpatient days in that period. The term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(10) Payments received - Payments received from uninsured patients are those payments received from or on behalf of uninsured patients as defined in paragraph (3) of this subsection.

(11) Charity charges - Charity charges are the total amount of hospital charges for inpatient and outpatient services attributed to charity care in a cost reporting period, as reported on the state teaching hospitals' annual financial reports, for use only in the calculation of the disproportionate share hospital payment under subsection (e)(1) of this section.

(12) Allowable cost - Allowable cost is defined by the department using the rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers when providing services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(13) Available fund - The available fund for state teaching hospitals is the total amount of funds that may be reimbursed to the state teaching hospitals as determined below.

(e) The department reimburses state-owned teaching hospitals on a monthly basis from the available fund for state teaching hospitals. Monthly payments equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments are not made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Prior to the start of the next federal fiscal year, the department determines the size of the fund to reimburse state-owned teaching hospitals for the next federal fiscal year. The available fund to reimburse the state teaching hospitals equals the total of their disproportionate share hospital payments, as follows:

(1) A state teaching hospital will receive a monthly disproportionate share payment based on the following formula:

Figure 1: 25 TAC §29.610(e)(1)

(2) If the adjusted hospital specific limit for a state teaching hospital is less than the formula in subparagraph (A) of this paragraph, a state teaching hospital will receive 100 percent of its adjusted hospital specific limit, instead of the amount determined under this paragraph.

(f) The department or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (d)(5) of this section, and its cost of services to uninsured patients as defined in subsection (d)(3) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g) of this section.

(1) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payments made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. Refer to subsection (d)(5) of this section.

(A) The total billed Medicaid charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The department or its designee determines that ratio by using the hospital's HCFA 2552-92, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The department or its designee uses the latest available Medicare cost report in the absence of the Medicare cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the department or its designee uses the total cost from the HCFA 2552-92, Worksheet B, Part 1, Column 25, and total charges from the HCFA 2552-92, Worksheet C, Part 1, Column 6. The ratio is the total cost divided by the total gross patient charges.

(B) The department or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(2) After the department or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the department subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(g) The department or its designee trends each hospital's "hospital specific limit" calculated from its historical base period cost report from subsection (f) of this section to the state's fiscal year disproportionate share program. For hospitals without full 12-month fiscal year cost reports, the department or its designee annualizes the cost to calculate the hospital specific limit. The department or its designee uses the inflation update factor, as defined in subsection (d)(8) of this section, in calculating the adjusted hospital specific limit. The department or its designee calculates the number of months from the mid-point of the hospital's cost reporting period to the mid-

point of the state fiscal year disproportionate share program. The department or its designee then multiplies the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations is multiplied by each hospital's hospital specific limit to obtain each hospital's adjusted hospital specific limit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg

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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty Insurance

##### Subchapter N. Residential Property Insurance

##### Market Assistance Program

##### 28 TAC §§5.10001-5.10015

The Commissioner of Insurance proposes new §§5.10001-5.10015, concerning the plan of operation of the Residential Property Insurance Market Assistance Program (MAP), pursuant to the Insurance Code, Article 21.49-12. This proposal replaces an earlier proposal published in the April 30, 1996 issue of the Texas Register (21 TexReg 3673) which is withdrawn in this issue. This new proposal is necessary to incorporate provisions for computerization of the MAP operations. Article 21.49-12 was enacted by the Texas Legislature in 1995 (Acts 1995, 74th Legislature, page 3008, chapter 415 §5, effective August 28, 1995) to require the Commissioner to establish a voluntary market assistance program to assist consumers in obtaining residential property insurance coverage in underserved areas that are to be determined and designated by the Commissioner under separate rule. The rule proposal on designation of underserved areas has not yet been published in the Texas Register. The purpose of the MAP, as specified in proposed §5.10001, is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including rural areas. The purpose of proposed new §§5.10001-5.10015, which constitute the proposed MAP plan of operation, is to specify the procedures and methods of operation of the MAP.

This proposed plan of operation was developed by an executive committee appointed by the Commissioner pursuant to Article 21.49-12 §3, and recommended to the Commissioner for adoption by rule. The Commissioner held a public hearing on the Executive Committee's recommended plan of operation on March

28, 1996, Docket No. 2215 (noticed at 21 TexReg 2319). As a result of that public hearing, the Executive Committee made changes to the plan of operation as originally recommended, and these changes are incorporated into this proposal. The Executive Committee on May 22, 1996 recommended additional changes to the plan of operation to incorporate provisions for computerization of the MAP operations, and these provisions are included in this proposal. The computerization is necessary for more efficient, cost-effective operations of the MAP to better serve consumers with residential property insurance availability problems in designated underserved areas of the state. The Texas Department of Insurance (Department) will contract with a qualified information service vendor (referred to as the "contracting entity" in the proposed plan of operation) to develop, maintain, and operate the computerized functions. The contracting entity is defined in proposed §5.10003 as the qualified information service vendor with whom the Department has contracted to develop and maintain software and to provide services for the MAP as specified in this plan of operation, including processing of applications; development, use, and maintenance of an electronic bulletin board and integrated database; and production of data reports.

The proposed plan of operation is necessary to specify the procedures and methods of operation of the MAP, including eligibility requirements, policy forms and types of coverage, rates, application forms and procedures, procedures for monitoring the operation of the MAP, criteria and procedures for mandatory participation by insurers, procedures for amendment of the plan of operation, and procedures for termination of the MAP; the role and responsibilities of the MAP Executive Committee; the role and responsibilities of participating agents and insurers; and the role and responsibilities of the Commissioner, the Department, and the Department's contracting entity. This plan of operation is proposed to become effective on August 15, 1996.

The following is a brief overview of the MAP application process proposed in this plan of operation. An originating agent, on behalf of a consumer in a designated underserved area, will submit to the Department a MAP application form (which is proposed for adoption by reference in a separate rule proposal, proposed §5.10016 relating to MAP Forms) and certain necessary documents evidencing the consumer's inability to obtain residential property insurance. The Department will review the application for certain information and log in the names and addresses of the applicant and the originating agent. The Department will forward the applications to the Department's contracting entity for verification for compliance with requirements for completeness and eligibility. Information from eligible MAP applications, including information on the applicant, originating agent, location and rating of the risk, and Voluntary Inspection Program certification pursuant to Article 5.33B of the Insurance Code, will be placed by the Department's contracting entity on the electronic bulletin board which will be accessible to all participating insurers. Based on this criteria transferred from the applications to the electronic bulletin board, insurers will select applicants from the bulletin board for purposes of reviewing for issuance of a quote. The insurer has 45 days from the date of the selection of the application on the electronic bulletin board to issue a quote or refuse to quote. The insurer shall send the quote directly to the MAP applicant and also report the quote to the Department via the electronic database. The quote is valid

for at least 30 days from the date the quote is issued. Applications for which a policy has not been issued remain on the bulletin board for one year from the date of entry on the bulletin board for selection and quoting by other insurers.

The following outlines the specific sections of the proposed plan of operation. Proposed §5.10001 specifies the purpose and scope of the MAP and the purpose and scope of this proposed plan of operation. Proposed new §5.10002 states the statutory and regulatory authority for the operation of the MAP. Proposed new §5.10003 defines terms used in the plan of operation, including the terms agent commissions, contracting entity, application, designated underserved area, issuing agent, manufactured home, originating agent, residence premises, residential property insurance, residential risk, and unaffiliated. Proposed new §5.10004 specifies the policy forms and types of coverage that are available for use through the MAP and the forms rules that govern the writing of the policies. The policy forms and types of coverage authorized for use depends on whether the property to be insured is located in a Class 1 or Class 2 designated underserved area. Subsection (a) of proposed new §5.10004 defines a Class 1 designated underserved area as an area determined and designated by rule as an underserved area by the Commissioner of Insurance, pursuant to both Articles 21.49-12 and 5.35-3 (Property Protection Program for Underserved Areas) of the Insurance Code and defines a Class 2 designated underserved area as an area determined and designated by rule as an underserved area by the Commissioner of Insurance, pursuant to Article 21.49-12 of the Insurance Code. It is proposed that in Class 1 designated underserved areas insurers may issue policy forms promulgated pursuant to both Articles 5.35 and 5.35-3 (Property Protection Program for Underserved Areas) and any additional endorsements filed pursuant to Article 5.35 and approved by the Commissioner. It is proposed that in Class 2 designated underserved areas insurers may issue policy forms promulgated pursuant to Article 5.35 and any additional endorsements filed pursuant to Article 5.35 and approved by the Commissioner. Under this proposal, the types of coverage that could be provided through the MAP for residential risks located in Class 1 designated underserved areas include (i) basic fire and extended coverage; (ii) named perils; (iii) broad form named perils; (iv) additional named perils, either separately or in combination; (v) all risk coverage; and (vi) any other coverage available under policy forms and endorsements promulgated pursuant to Articles 5.35 or 5.35-3 or filed pursuant to Article 5.35 and approved by the Commissioner. The types of coverage that could be provided through the MAP for residential risks located in Class 2 designated underserved areas include (i) basic fire and extended coverage; (ii) named perils; (iii) broad form named perils; (iv) all risk coverage; and (v) any other coverage available under policy forms and endorsements promulgated pursuant to Article 5.35 or filed pursuant to Article 5.35 and approved by the Commissioner. Pursuant to Article 21.49-12 §1(b), coverage for the perils of windstorm and hail for those risks that are eligible for windstorm and hail insurance coverage through the Texas Catastrophe Property Insurance Association (Insurance Code, Article 21.49) cannot be provided for a risk located in either Class 1 or Class 2 designated underserved areas. Proposed new §5.10005(a) provides, in accordance with Article 21.49-12 §2(b)(3), that each insurer has the right to individually evaluate the risk to be insured through

the MAP and to apply the rates that are in accordance with the provisions of the Insurance Code that are applicable to that insurer. Proposed new §5.10005(b), in accordance with Article 21.49-12 §2(b)(4), provides that each insurer has the option of providing a premium quote on the same coverage basis for which it normally provides insurance in this state using its own underwriting guidelines and the rates determined in accordance with the provisions of the Insurance Code applicable to that insurer. Proposed new §5.10006 addresses eligibility for referral, including general eligibility requirements; insurable property requirements; provision for using certification of insurability issued through the Voluntary Inspection Program operated pursuant to Article 5.33B of the Insurance Code; specification of factors that cannot be used to deny application to the MAP or to determine eligibility for referral through the MAP; required documentation of cancellation, non-renewal or declination; ineligible applicants; and re-submission procedures. Proposed new §5.10007 specifies requirements relating to participating insurers, including eligibility, notification of the Department of an insurer's intent to participate, authorization for an insurer to use any of the criteria transferred from the MAP application to the electronic bulletin board to select applications for review for quote, agent notification requirements, and required compliance with insurance laws and regulations. Proposed new §5.10008 addresses the role and responsibilities of participating agents—both originating agents and issuing agents—including qualifications, functions, and agent commissions. Article 21.49-12 §4(d) provides that an originating agent shall share commissions, as required by the plan of operation, with the issuing agent if the originating agent holds a license as a local recording agent or is a salaried representative for those companies whose plan of operation does not contemplate the use of local recording agents. It is proposed in subsection (d) of §5.10008 that the originating agent's share of the commission for the original policy term be \$25 when the policy premium is \$500 or less and \$50 when the policy premium is over \$500. It is proposed that if the issuing agent is a licensed local recording agent, the originating agent's share of the commission for policy renewals shall be 25 percent of the amount of the commission paid to the issuing agent by the insurer; and if the issuing agent is a salaried representative, the originating agent's commission fee for policy renewals shall be \$15. The renewal commission and renewal commission fee requirements shall apply only to policy renewals in which the insurer is the same insurer as when the original policy was issued through the MAP. Under the proposal, the issuing agent is responsible for the payment of the originating agent's share of the commission and commission fee and must make payment within 30 days after the date the commission payment is made to the issuing agent by the insurer. The issuing agent's commission is paid by the insurer for which the issuing agent is appointed and is based on the contract or agreement between the insurer and the issuing agent. Proposed new §5.10009 specifies the overall operational procedures of the MAP, including the application process; the application review process; the process for referral of applications through placement of certain specified application information on an electronic bulletin board accessible to participating insurers to select applications for purposes of determining whether to issue a premium quote; the insurers' processing of selected applications and issuance of premium quotes; the Department's data collection and analysis; confidentiality of documents; educational initiatives; and complaints

procedures. Subsection (d) of proposed §5.10009, which addresses the insurers' processing of selected applications and issuance of premium quotes, requires insurers after selecting an application on the electronic bulletin board to make a premium quote or indicate refusal to quote within 45 days after selecting the application and requires insurers to enter into the electronic database that the insurer has quoted or has refused to quote. Subsection (d) of proposed §5.10009 further provides that insurers shall send quotes directly to MAP applicants and simultaneously report the quote to the Department via the electronic database. It provides that an insurer's quote shall be valid for at least 30 days after the date the quote is issued and requires insurers, within 35 days after issuance of the quote, to enter into the electronic database that the quote has been accepted or rejected by the applicant. Subsection (d) of proposed §5.10009 also requires insurers, within five business days after the issuance date of the policy, to notify the Department via the electronic database and the originating agent in writing or via electronic means that the insurance policy was issued. Subsection (f) of proposed new §5.10009 addresses confidentiality requirements. The disclosure of information collected, assembled, or maintained by the Department in operating the MAP is governed by the Texas Open Records Act, Article 21.49-12 of the Insurance Code and other laws, either constitutional, statutory, or judicial decision, which govern the disclosure of specific types of information. All confidentiality and disclosure requirements that apply to the Department shall apply to the Department's contracting entity. Pursuant to Article 21.49-12 §5(a), all application files and related documents received by the Department pursuant to Article 21.49-12 and this plan of operation are confidential. Pursuant to Article 21.49-12 §5(b), the Department shall not permit the application files and related documents to be made available to the public except that the Department shall allow access to such files and related documents to the originating agent, the issuing agent, the applicant for their own file, or an insurer who agrees to insure the applicant. However, under proposed §5.10009(f)(2), the Department upon authorization by the applicant shall forward, on the applicant's behalf, the completed application form for the property proposed to be insured, and if applicable, declination letter or letters or letter or letters of non-eligibility, and cancellation or non-renewal notice to the Department's contracting entity for the sole purpose of placement of application information on the electronic bulletin board to be accessed by insurers participating in the MAP for the sole purpose of reviewing for quote and writing residential property insurance. It is proposed that the applicant's authorization to so forward the application and related documents be contained in the application form and that the applicant's signing of the application form effectuates the authorization. If the applicant does not sign the application form authorizing the Department to forward copies of the applicant's completed application form and related documents, the application shall not be forwarded to the Department's contracting entity for the placement of application information on the electronic bulletin board and shall be returned to the originating agent. Proposed new §5.10010 addresses the membership and operations of the MAP Executive Committee, which is authorized by Article 21.49-12 §3, including membership composition, qualifications, terms, replacement and reappointment, voting, and removal for cause; election of officers; functions; subcommittees; and open meetings requirements. In accordance with the requirements

of Article 21.49-12, proposed new §5.10011 specifies criteria and procedures for implementation of mandatory participation by insurers, either on the Commissioner's own motion or on the recommendation of the Executive Committee. Pursuant to Article 21.49-12 §2(b)(8), the Commissioner may make insurer participation in the MAP mandatory based on criteria contained in the plan of operation. Pursuant to Article 21.49-12 §6(b), the Executive Committee, after periodic review, shall report to the Commissioner on the need for establishment of a mandatory program. Proposed new §5.10012 specifies methods and procedures for amending the plan of operation. Proposed new §5.10013 specifies, in accordance with Article 21.49-12 §7, that the MAP, its executive committee members, participating insurers and agents are not personally liable for any act performed in good faith within the scope of the person's authority as determined under Article 21.49-12 or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious. Proposed new §5.10014 specifies the procedures for the termination of the MAP. In accordance with Article 21.49-12 §6(b), the Executive Committee may recommend termination of the MAP to the Commissioner, but not earlier than 48 months following the commencement date of the initial plan of operation. The recommendation shall be made in writing to the Commissioner and supported by findings as to why the MAP should be terminated and must be approved by at least two-thirds of the members of the Executive Committee. The MAP shall be terminated only upon the approval of the Commissioner, but in no event earlier than 48 months following the commencement date of the initial plan of operation. Such termination by the Commissioner may be made only after notice and hearing. Proposed new §5.10015 contains a severability provision.

Lyndon Anderson, associate commissioner, property and casualty division, has determined that for each year of the first five years the proposed sections are in effect, any fiscal implications to state government are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and are not as a result of the adoption, enforcement, or administration of the proposed sections. Mr. Anderson has also determined that for each year of the first five years the proposed sections are in effect, there will be no fiscal implications to units of local government as a result of enforcing or administering the proposed sections, and there will be no effect on local employment or local economy.

Mr. Anderson has further determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of administering the proposed sections will be an efficient, cost-effective operation of a program to increase the availability of residential property insurance through the licensed admitted market for risks located in those areas of the state that are designated as underserved areas for purposes of the MAP. Consumers in these designated underserved areas are currently unable to purchase residential property insurance through the licensed admitted market because insurers are unwilling to write such coverage and are, therefore, forced either to purchase residential property insurance from unlicensed non-admitted insurers at very high costs or to go without this coverage. The operation of the MAP will provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including

rural areas. Through the operation of the MAP, consumers will be afforded opportunities to purchase residential property insurance from licensed admitted insurance carriers based on each insurers' underwriting guidelines and rates determined in accordance with the provisions of the Insurance Code applicable to that insurer. Any possible economic costs to persons, i.e., applicants, participating agents, and participating insurers, required to comply with the proposed sections for each year of the first five years the proposed sections will be in effect are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and not as a result of the adoption, enforcement, or administration of the proposed sections, except as follows: (i) in proposed §5.10006(e)(3), the minimal costs to originating agents to copy and complete the promulgated one-page letter of non-eligibility; (ii) in proposed §5.10007(b)(3), the costs to participating insurers to notify all of the insurers' appointed agents that the insurer is voluntarily participating in the MAP and to provide the agents information about the MAP and its procedures; such costs will vary from insurer to insurer based on the number of agents and the volume of informational material prepared by the insurer; (iii) in proposed §5.10008(d)(1), the costs to issuing agents to maintain recordkeeping and process payment of originating agent commissions; such costs will vary from agent to agent based on how many policies the agent delivers through the MAP, the size of the agency, and the computerization of the agency; (iv) in proposed §5.10009(d)(1), the telephone costs to access the electronic bulletin board for selection of applications for review; such costs will vary from insurer to insurer based on the number of applications selected by each insurer; (v) in proposed §5.10009(d)(2)(B), the telephone costs to access the electronic database to notify the Department of the issuance of a premium quote or the refusal to quote; such costs will vary from insurer to insurer based on each insurer's number of quotes made and refusals to quote; (vi) in proposed §5.10009(d)(3)(A), the costs to insurers to send a copy of the quote to the applicant; such costs will vary from insurer to insurer based on the number of quotes an insurer issues through the MAP and the method used by the insurer to generate the quote; (vii) in proposed §5.10009(d)(3)(A), the telephone costs to insurers to access the electronic database to report to the Department the quote information; such costs will vary from insurer to insurer based on the number of quotes an insurer issues through the MAP; (viii) in proposed §5.10009(d)(3)(B), the telephone costs to access the electronic database to notify the Department that the quote has been accepted or rejected by the applicant; such costs will vary from insurer to insurer based on number of applicants quoted by each insurer; (ix) in proposed §5.10009(d)(4), the telephone costs to insurers to access the electronic database to notify the Department that the insurance policy was issued; such costs will vary from insurer to insurer based on the number of policies issued through the MAP; and (x) in proposed §5.10008(d)(1)(D) and §5.10009(d)(4), the costs to insurers to notify the originating agent in writing or via electronic means that the insurance policy was issued; such costs will vary from insurer to insurer based on the number of policies an insurer issues through the MAP and the method used by the insurer to generate the notification. The costs specified in (i) will be offset in whole or in part by the commissions to be paid to originating agents as required by Article 21.49-12 §4 of the Insurance Code and proposed 28 TAC §5.10008(d)(1). The costs specified in (iii) will be offset in whole or in part by the

commissions to be paid to issuing agents as provided in proposed 28 TAC §5.10008(d)(2). In addition, the costs specified in (iii) are costs that normally would be incurred by agents for any applicant for residential property insurance. Mr. Anderson has also determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses as a result of enforcing or administering the proposed sections.

Comments on the proposal must be submitted within 30 days after publication of the proposed rules in the Texas Register to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC #113-2A, Austin, Texas, 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, P. O. Box 149104, MC #103-1A, Austin, Texas, 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Insurance Code, Articles 21.49-12 and 1.03A, and the Government Code §§2001.004-2001.038. Article 21.49-12 §1(a) requires the Commissioner to establish a voluntary market assistance program to assist Texas consumers in obtaining residential property insurance coverage in underserved areas, which shall be determined and designated by the Commissioner by rule using the standards specified in Article 5.35-3 §1 of the Insurance Code. Article 21.49-12 §2(a) provides that the MAP Executive Committee shall develop and submit the plan of operation to the Commissioner for adoption by rule. Article 21.49-12 §2(a) further provides that the plan of operation shall indicate types of coverage, policy forms and terms, application forms, eligibility, and overall operation of the program. Article 21.49-12 §2(b) provides that the plan of operation shall include, but is not limited to, certain specified provisions relating to applications, rates, premium quotes, ineligible applicants, criteria under which the Commissioner may make insurer participation in the MAP mandatory, and subcommittees. Article 21.49-12 §4(d) provides that an originating agent shall share commissions, as required by the plan of operation, with the issuing agent if the originating agent holds a license as either a local recording agent or as a salaried representative for those companies whose plan of operation does not contemplate the use of local recording agents. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

The following statutes are affected by this proposal: §§5.10001-5.10015 – Insurance Code, Articles 21.49-12 and 5.35-3.

*§5.1001. Purpose and Scope.*

(a) The purpose of the Residential Property Insurance Market Assistance Program is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in all underserved areas of the state, including

rural areas, as designated by the Commissioner of Insurance pursuant to Article 21.49-12 of the Insurance Code.

(b) The purpose of this plan of operation, which is contained in §§5.10001-5.10015 of this title (relating to the Residential Property Insurance Market Assistance Program Plan of Operation), is to specify the procedures and methods of operation of the Residential Property Insurance Market Assistance Program, including:

- (1) eligibility requirements;
- (2) policy forms and types of coverage;
- (3) rates;
- (4) application forms and procedures;
- (5) role and responsibilities of participating insurers;
- (6) role and responsibilities of participating agents and requirements for commissions;
- (7) role and responsibilities of the Executive Committee;
- (8) role and responsibilities of the Commissioner of Insurance, the Texas Department of Insurance, and the Department's contracting entity;
- (9) procedures for monitoring the operation of the MAP;
- (10) criteria and procedures for mandatory participation by insurers;
- (11) procedures for amendment of the plan of operation; and
- (12) procedures for termination of the MAP.

*§ 5.10002. Authority.*

The Residential Property Insurance Market Assistance Program is a program of the Texas Department of Insurance established and operated pursuant to Article 21.49-12 of the Insurance Code (Acts 1995, 74th Leg., ch. 415, §5, p. 3008, eff. Aug. 28, 1995) and this plan of operation as set forth in 28 TAC §§5.10001-5.10015.

*§5.10003. Definitions.*

The following words and terms when used in this plan of operation, which is contained in §§5.10001-5.10015 of this title (relating to the Residential Property Insurance Market Assistance Program Plan of Operation), shall have the following meanings unless the context clearly indicates otherwise.

**Agent commissions**—The portion of the premium paid by an insurer participating in the Residential Property Insurance Market Assistance Program for production of the residential property insurance business pursuant to Article 21.49-12 §4 of the Insurance Code.

**Application**—The form promulgated by the Texas Department of Insurance to be completed by an applicant and the originating agent and submitted to the Texas Department of Insurance to apply for coverage through the Residential Property Insurance Market Assistance Program.

**Commissioner**—Commissioner of Insurance of the State of Texas.

**Contracting entity**—The qualified information service vendor with whom the Texas Department of Insurance has contracted to develop and maintain software and to provide services for the Residential Property Insurance Market Assistance Program as specified in this plan of operation, which is contained in §§5.10001-5.10015 of this

title (relating to the Residential Property Insurance Market Assistance Program Plan of Operation), including processing of applications; development, use, and maintenance of an electronic bulletin board and integrated database; and production of data reports.

Department-Texas Department of Insurance.

Designated underserved area-An area determined and designated by rule as an underserved area by the Commissioner of Insurance, pursuant to Article 21.49-12 of the Insurance Code, using the standards specified in Article 5.35-3 §1 of the Insurance Code.

Executive Committee-The 11-member body appointed by the Commissioner of Insurance and authorized pursuant to Article 21.49-12 of the Insurance Code to advise and consult with the Commissioner with regard to the administration of the Residential Property Insurance Market Assistance Program.

Insurer-Any insurer licensed to write property or casualty insurance and actually writing residential property insurance in Texas, including Lloyd's, reciprocals, or interinsurance exchanges; an insurer is actually writing residential property insurance in Texas if the insurer has reported under the statistical plan a positive number for residential property insurance direct written premium during the last reporting period.

Issuing agent—

(A) A licensed local recording agent appointed to represent the insurer providing residential property insurance coverage through the Residential Property Insurance Market Assistance Program who signs, executes, and delivers the policies of insurance; maintains a record of the business; examines and inspects the risk; receives and collects premiums; and performs other customary duties of a local recording agent; or

(B) A salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents appointed to represent the insurer providing residential property insurance coverage through the Residential Property Insurance Market Assistance Program who signs, executes, and delivers the policies of insurance; maintains a record of the business; examines and inspects the risk; and receives and collects premiums; and performs other customary duties of a local recording agent.

Manufactured home-Mobile home, manufactured housing, or manufactured home as defined in the Texas Manufactured Housing Standards Act (Texas Revised Civil Statutes, Article 5221f).

MAP-the Residential Property Insurance Market Assistance Program authorized and operated pursuant to Article 21.49-12 of the Insurance Code to assist consumers in Texas in obtaining residential property insurance coverage in underserved areas as determined and designated by the Commissioner of Insurance by rule.

Originating agent-

(A) A licensed local recording agent authorized by Article 21.49-12 of the Insurance Code to complete an application for insurance on behalf of an applicant for submission to the Residential Property Insurance Market Assistance Program without being appointed to represent the insurer providing the coverage through the Residential Property Insurance Market Assistance Program; or

(B) A salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents authorized by Article 21.49-12 of the Insurance Code to complete an

application for insurance on behalf of an applicant for submission to the Residential Property Insurance Market Assistance Program without being appointed to represent the insurer providing the coverage through the Residential Property Insurance Market Assistance Program.

Residence premises-The residence premises shown on the declarations page of the insured's residential property insurance policy and which includes the one-family or two-family dwelling and other private structures and grounds.

Residential property insurance-Insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, farm and ranch policy, or farm and ranch owners policy.

Residential risk-Dwelling, manufactured home, or other private structure located on the residence premises, and personal property contained therein.

Unaffiliated-Not an affiliate or not affiliated with another insurer or insurers as "affiliate" is defined in the Insurance Holding Company System Regulatory Act (Article 21.49-1 of the Insurance Code).

#### § 5.10004. Policy Forms and Types of Coverage.

(a) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Class 1 designated underserved area-An area determined and designated by rule as an underserved area by the Commissioner of Insurance, pursuant to both Articles 21.49-12 and 5.35-3 of the Insurance Code.

(2) Class 2 designated underserved area-An area determined and designated by rule as an underserved area by the Commissioner of Insurance, pursuant to Article 21.49-12 of the Insurance Code.

(b) Forms.

(1) The following forms may be used in Class 1 designated underserved areas in writing coverage through the MAP:

(A) a residential property insurance policy form and endorsements promulgated pursuant to Article 5.35 of the Insurance Code;

(B) a residential property insurance policy form and endorsements promulgated pursuant to Article 5.35-3 of the Insurance Code; and

(C) additional endorsements filed by an individual insurer pursuant to Article 5.35 of the Insurance Code and approved by the Commissioner.

(2) The following forms may be used in Class 2 designated underserved areas in writing coverage through the MAP:

(A) a residential property insurance policy form and endorsements promulgated pursuant to Article 5.35 of the Insurance Code; and

(B) additional endorsements filed by an individual insurer pursuant to Article 5.35 of the Insurance Code and approved by the Commissioner.

(c) Form rules. The rules governing the writing of the policies placed through the MAP shall be the same rules promulgated



by the Commissioner of Insurance in the Texas Personal Lines Manual for each such type of policy form.

(d) Types of coverage.

(1) Coverage may be provided by participating insurers through the MAP for residential risks, except coverage for the perils of windstorm and hail for those risks that are eligible for windstorm and hail coverage through the Texas Catastrophe Property Insurance Association pursuant to Article 21.49 of the Insurance Code.

(2) The types of coverage that may be provided in Class 1 designated underserved areas are:

- (A) basic fire and extended coverage;
- (B) named perils;
- (C) broad form named perils;
- (D) additional named perils, either separately or in combination;
- (E) all risk coverage;
- (F) any other coverage available under policy forms and endorsements promulgated pursuant to Articles 5.35 or 5.35-3 of the Insurance Code or filed by an individual insurer pursuant to Article 5.35 and approved by the Commissioner.

(3) The types of coverage that may be provided in Class 2 designated underserved areas are:

- (A) basic fire and extended coverage;
- (B) named perils;
- (C) broad form named perils;
- (D) all risk coverage;
- (E) any other coverage available under policy forms and endorsements promulgated pursuant to Article 5.35 of the Insurance Code or filed by an individual insurer pursuant to Article 5.35 and approved by the Commissioner.

§ 5.10005. Rates.

(a) Pursuant to Article 21.49-12 §2(b)(3) of the Insurance Code, each insurer has the right to individually evaluate the risk and apply the rates that are in accordance with the provisions of the Insurance Code that are applicable to that insurer.

(b) Pursuant to Article 21.49-12 §2(b)(4) of the Insurance Code, each insurer has the option of providing a premium quote on the same coverage basis for which it normally provides insurance in this state using its own underwriting guidelines and the rates determined in accordance with the provisions of the Insurance Code applicable to that insurer.

§ 5.10006. Eligibility for Referral.

(a) Eligibility requirements. The following requirements must be met to be eligible to apply for a referral through the MAP:

- (1) the residential risk must be located in a designated underserved area;
- (2) the property must be insurable as provided in subsection (b) of this section; and

(3) the applicant must present written documentation as specified in subsection (e) of this section that the applicant has been unable to obtain residential property insurance.

(b) Insurable property. To be insurable as required in subsection (a)(2) of this section, the property must meet the following requirements:

(1) the general physical condition of the dwelling, manufactured home, or other private structure indicates good maintenance and there is no unrepaired previous damage; and

(2) good housekeeping is maintained throughout the residence premises.

(c) Certification of insurability. The requirement of insurable property as specified in subsection (b) of this section is met if the property has been inspected under the Voluntary Inspection Program and the residential property condition evaluation report and the certificate of insurability has been issued on the residential risk, pursuant to the Insurance Code, Article 5.33B. An evaluation report and a voluntary inspection certificate are not required to apply for referral through the MAP.

(d) Prohibited factors. The following factors shall not be used to deny application to the MAP or to determine eligibility for referral through the MAP:

(1) the value of the dwelling, manufactured home, or other private structure;

(2) the age of the dwelling, manufactured home, or other private structure;

(3) the geographic location of the dwelling, manufactured home, or other private structure located in a designated underserved area; or

(4) the condition of surrounding premises.

(e) Documentation of cancellation, non-renewal, or declination. An originating agent, acting on behalf of an applicant to the MAP, shall submit current written documentation as provided in this subsection with the application to the MAP. Such written documentation shall be dated within the one-year period which immediately precedes the date of application to the MAP. Photocopies or facsimile copies of original documents shall be acceptable.

(1) Canceled or non-renewed residential property insurance. If the applicant's residential property insurance has been canceled or non-renewed within the one-year period immediately preceding the date of application to the MAP, the following documents must be attached to the application:

(A) a copy of the notice of cancellation or non-renewal, and

(B) documentation of at least one other attempt, as provided in paragraph (3) of this subsection, to obtain residential property insurance from a licensed insurer that is unaffiliated with the insurer who issued the notice of cancellation or non-renewal.

(2) No previous residential property insurance. If the applicant did not have residential property insurance in the one-year period immediately preceding the date of application to the MAP, the applicant must attach to the application documentation of attempts, as provided in paragraph (3) of this subsection, to obtain residential property insurance from two or more licensed unaffiliated insurers.

(3) Attempts to obtain residential property insurance. The documentation of the attempt or attempts to obtain residential property insurance from a licensed insurer must be addressed to the applicant and relate to the property proposed to be insured. The following documents satisfy the documentation requirements in paragraphs (1)(B) and (2) of this subsection:

(A) a current letter or letters of declination of residential property insurance from a licensed insurer or insurers;

(B) a current letter or letters of non-eligibility for residential property insurance issued by a licensed local recording agent or by a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents, both of whom may also be the originating agent. The agent or salaried representative must represent at least one licensed insurer actually writing residential property insurance in this state. The letter or letters of non-eligibility shall be on a form promulgated by the Commissioner for this purpose which states that based on known underwriting guidelines the agent or salaried representative is unable to place the residential risk with a licensed insurer available to that agent or salaried representative. The agent or salaried representative shall indicate on the form whether the letter of non-eligibility applies to one or two unaffiliated licensed insurers.

(f) Ineligible applicants.

(1) Fraudulent claims. Individuals who have had previous residential property insurance canceled or non-renewed for submission of a fraudulent claim are not eligible to apply for referral through the MAP.

(2) Cancellation for non-payment of premium for coverage obtained through the MAP. An applicant is not eligible to apply to the MAP again for the same risk if the insurer cancels coverage obtained through the MAP for non-payment of premium.

(g) Re-submission. An originating agent may re-submit an application to the MAP if the applicant satisfies all of the eligibility requirements of MAP on the date of re-submission.

#### *§5.10007. Participating Insurers.*

(a) Eligibility. An insurer as defined in §5.10003 of this plan of operation (also §5.10003 of this title, relating to Definitions) is eligible to participate in the MAP.

(b) Voluntary participation.

(1) An insurer who wishes to participate in the MAP shall notify the Department in writing of the insurer's intent to voluntarily participate in the MAP.

(2) An insurer may use any of the criteria transferred from the MAP application to the electronic bulletin board to select applications for review for quote.

(3) A participating insurer shall notify all agents appointed with the insurer that the insurer is voluntarily participating in the MAP and shall provide to its agents information about the MAP and its procedures.

(4) A participating insurer shall provide the Department with no less than 30 days advance written notice when the insurer decides to terminate its voluntary participation in the MAP.

(c) Required compliance with insurance laws and regulations.

(1) A participating insurer shall comply with all laws, rules and regulations governing the operation of the MAP.

(2) A participating insurer is subject to all other applicable laws, rules, and regulations governing the writing of residential property insurance in this state.

#### *§ 5.10008. Participating Agents.*

(a) Qualifications.

(1) An individual is eligible to perform the functions of an originating agent for a MAP applicant if the individual, at the time the application to the MAP is completed, is duly licensed by the Department as a local recording agent or is a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents.

(2) An individual is eligible to perform the functions of an issuing agent for an insurer voluntarily participating in the MAP if the individual is duly licensed by the Department as a local recording agent and is appointed to represent the insurer or is a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents.

(b) Functions of an originating agent.

(1) The originating agent shall complete the application for insurance on behalf of the MAP applicant.

(2) The originating agent shall submit the application and documentation required by subsection (e) of §5.10006 of this plan of operation (also subsection (e) of §5.10006 of this title, relating to Eligibility for Referral) regarding cancellation, non-renewal, or declination to the MAP as soon as possible, but no later than the fifth business day following completion of the application.

(3) Pursuant to Article 21.49-12 §4(e) of the Insurance Code, if the originating agent and the issuing agent are not the same person, the originating agent may not be held to be the agent of the insurer unless there is an appointment as specified by Article 21.14 of the Insurance Code.

(c) Functions of an issuing agent.

(1) The issuing agent shall perform all of the customary duties of a local recording agent including, but not limited to, the following:

(A) signing, executing and delivering policies of insurance;

(B) maintaining a record of the business;

(C) examining and inspecting the risk; and

(D) receiving and collecting premiums.

(2) The issuing agent may also be the originating agent.

(d) Agent commissions.

(1) Originating agent's commission.

(A) Pursuant to Article 21.49-12 §4(d) of the Insurance Code, the originating agent shall share commissions with the issuing agent.

(B) The originating agent's share of the commission for the original policy term shall be as follows: \$25 when the policy

premium is \$500 or less, and \$50 when the policy premium is over \$500.

(C) If the issuing agent is a licensed local recording agent, the originating agent's share of the commission for policy renewals shall be 25 percent of the amount of the commission paid to the issuing agent by the insurer. If the issuing agent is a salaried representative, the originating agent's commission fee for policy renewals shall be \$15. The renewal commission and renewal commission fee requirements shall apply only to policy renewals in which the insurer is the same insurer as when the original policy was issued through the MAP.

(D) Within five working days after the issuance date of the insurance policy issued through the MAP, the insurer shall notify the Department via the electronic database and the originating agent in writing or via electronic means that the insurance policy was issued. The notice shall include the insurance policy number and the name, address, telephone number, and fax number of the issuing agent.

(E) The issuing agent shall be responsible for payment of the originating agent's share of the commission and commission fee as specified in subparagraphs (B) and (C) of this paragraph within 30 days after the date the commission payment is made to the issuing agent by the insurer.

(2) Issuing agent's commission. The payment of the commission to the issuing agent is based on the contract or agreement between the insurer and the issuing agent.

#### *§5.10009. Operations.*

##### (a) Application process.

(1) Applications will be accepted only from a duly licensed local recording agent or from a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents.

(2) The Department may establish a process to enable applicants to contact the Department for referral of their residential risks to participating insurers.

(3) Agents submitting applications to the MAP shall use the application promulgated by the Department for use with the MAP, shall submit a completed application packet as specified in paragraph (4) of this subsection, and shall submit such applications to the Department's Property and Casualty Intake Unit.

(4) A completed application packet shall consist of the following to be eligible for referral to participating insurers:

(A) a completed application form signed by both the applicant and the originating agent;

(B) declination letter or letters or non-eligibility letter or letters as provided in §5.10006 of this plan of operation (also §5.10006 of this title, relating to Eligibility for Referral); and

(C) cancellation or non-renewal notices as provided in §5.10006 of this plan of operation (also §5.10006 of this title, relating to Eligibility for Referral).

(5) An application shall indicate if the applicant has a voluntary inspection property condition evaluation report and certificate of insurability, as specified in §5.10006 of this plan of operation (also §5.10006 of this title, relating to Eligibility for

Referral). The applicant may provide a copy of the report and the certificate to the insurer at the time of the insurer's inspection of the residential risk.

##### (b) Application review.

(1) After preliminary processing, including review for signatures of the applicant and originating agent and logging in of names and addresses of applicant and originating agent, the Department's Property and Casualty Intake Unit shall forward all MAP applications to the contracting entity for further processing as specified in this subsection and subsection (c) of this section. The Property and Casualty Intake Unit shall notify the originating agent in writing or via electronic means of the receipt of the application.

(2) Applications, including the information on the residential risks proposed to be insured, will be verified by the contracting entity for compliance with the requirements specified in this section and in §5.10006 of this plan of operation (also §5.10006 of this title, relating to Eligibility for Referral).

(3) Applications ineligible for referral through the MAP will be returned to the originating agent within 14 calendar days of receipt by the Department with written documentation stating the reason or reasons for the ineligibility. A copy of the notice of ineligibility shall be sent to the applicant.

##### (c) Referral of applications.

(1) Information from eligible MAP applications as specified in paragraph (2) of this subsection shall be placed on an electronic bulletin board accessible to all participating insurers for selection for purposes of issuing a quote.

(A) If a policy has not been issued within 90 days from the date the application is entered on the bulletin board, the contracting entity shall notify the originating agent in writing or via electronic means.

(B) The MAP application shall remain as an active MAP application on the electronic bulletin board available for selection and quoting by an insurer until a policy is issued but for no longer than one year from the date the application is entered on the electronic bulletin board.

(C) If a policy has not been issued within one year from the date the application is entered on the bulletin board, the application shall be removed from the system, and the contracting entity shall notify the applicant in writing and the originating agent in writing or via electronic means.

(2) The information provided to participating insurers on the electronic bulletin board shall include the following:

(A) originating agent's name, mailing address, telephone number, fax number, and agent's TDI identification number;

(B) name of applicant and co-applicant, mailing address, and phone number;

(C) applicant's military status;

(D) designated underserved area in which property to be insured is located, including location zip code, whether in Class 1 designated underserved area or Class 2 designated underserved area, and the county where the property is located;

(E) location of property to be insured, including if same as applicant's mailing address, and if not, street address and city;

(F) rating Information:

- (i) fringe area if applicable;
- (ii) key rate used and whether in protected or in unprotected area;
- (iii) type of construction;
- (iv) policy form requested;
- (v) dwelling and personal property coverage amounts;
- (vi) deductible;
- (vii) year built;
- (viii) structure type;
- (ix) usage type;
- (x) owner or tenant occupancy;

(G) availability of Voluntary Inspection Program certification.

(3) The contracting entity shall return application packets to the Department's MAP Division upon completion of entering application information on the electronic bulletin board.

(d) Insurers' processing of selected applications.

(1) Application review. An insurer may select applications based on criteria contained on the electronic bulletin board and shall review each application in accordance with the provisions set forth in §§5.10004 and 5.10005 of this plan of operation (also §5.10004 of this title, relating to Policy Forms and Types of Coverage, and §5.10005 of this title, relating to Rates).

(2) Determination of whether to issue premium quote.

(A) An insurer shall make its premium quote or indicate the insurer's refusal to quote within 30 days after selecting the application.

(B) If the insurer, however, has not quoted or refused to quote by the 30th day after selecting an application, the insurer shall be considered to have requested additional time and shall have an additional 15 days to quote or to refuse to quote. Within 45 days after selecting an application, the insurer shall enter into the electronic database that the insurer has quoted or has refused to quote.

(C) An insurer shall issue a premium quote as specified in paragraph (3) of this subsection.

(3) Issuance of premium quote. Insurers shall issue premium quotes in accordance with the following provisions:

(A) An insurer shall send its quote directly to the MAP applicant and simultaneously report the required information as specified in subparagraph (C) of this paragraph to the Department via the electronic database.

(B) An insurer's quote shall be valid for at least 30 days after the date the quote is issued. Within 35 days after issuance of the quote, the insurer shall enter into the electronic database that the quote has been accepted or rejected by the applicant. If an applicant

has not affirmatively rejected the quote by the thirty-first day after the quote is issued, the insurer shall enter into the electronic database that the quote has been rejected.

(C) An insurer's quote shall contain the following information:

- (i) name and address of MAP applicant;
- (ii) MAP application TDI reference number;
- (iii) location of the residential risk to be insured;
- (iv) insurer's name, mailing address, and phone number;
- (v) type of policy being quoted;
- (vi) the amount of premium due for the policy quoted, limits of liability, applicable deductible, and term of the policy;
- (vii) issuance date and expiration date of the quote;
- (viii) instructions for the applicant to contact the issuing agent to accept the offered quote;
- (ix) issuing agent's name, mailing address, phone number, and fax number.

(4) Notification of issuance of policy. Within five business days after the issuance date of the insurance policy, the insurer shall notify the Department via the electronic database and the originating agent in writing or via electronic means that the insurance policy was issued. The notification shall include the policy number and the name, address, telephone number, and fax number of the issuing agent.

(5) Removal from bulletin board. An application shall be removed from the electronic bulletin board upon acceptance of a quote by the applicant.

(e) MAP data collection and analysis.

(1) The Department shall provide quarterly data analysis reports to the Executive Committee to enable the Executive Committee to fully evaluate the operations of the MAP.

(2) Upon the Executive Committee's request, the Department shall provide additional data and analyses of data for purposes of review of the MAP or for other purposes related to the administration of the MAP as deemed appropriate by the Executive Committee.

(f) Confidentiality of documents. Disclosure of information collected, assembled, or maintained by the Department in operating the MAP is governed by the Texas Open Records Act (Texas Government Code Chapter 552); Article 21.49-12 of the Insurance Code; and other laws, either constitutional, statutory, or judicial decision, which govern the disclosure of specific types of information. All confidentiality and disclosure requirements that apply to the Department shall apply to the Department's contracting entity.

(1) Article 21.49-12 §5 confidentiality requirements.

(A) Pursuant to Article 21.49-12 §5(a) of the Insurance Code, all application files and related documents received by the Department pursuant to Article 21.49-12 and this plan of operation shall be confidential.

(B) Pursuant to Article 21.49-12 §5(b) of the Insurance Code, the Department shall not permit the application files and related documents to be made available to the public except that the Department shall allow access to such files and related documents to:

- (i) the originating agent,
- (ii) the issuing agent,
- (iii) the applicant for their own file, or
- (iv) an insurer who agrees to insure the applicant.

(2) Applicant's authorization.

(A) Pursuant to the Commissioner's authority in Article 21.49-12 §2(a) of the Insurance Code to promulgate this plan of operation and the Commissioner's rulemaking authority in Article 21.49-12 §8 of the Insurance Code to promulgate rules appropriate to accomplish the purposes of the MAP, the Department upon authorization by the applicant shall forward, on the applicant's behalf, the completed application form for the property proposed to be insured, and, if applicable, declination letter or letters or letter or letters of non-eligibility, and cancellation or non-renewal notice to the Department's contracting entity for the sole purpose of placement of application information on the electronic bulletin board to be accessed by prospective insurers participating in the MAP for the sole purpose of reviewing for quote and writing residential property insurance for the applicant.

(B) The applicant's authorization as specified in subparagraph (A) of this paragraph shall be provided by the applicant's signing the MAP application form which shall contain the Applicant's Authorization. The Applicant's Authorization shall read as follows: "I hereby authorize the Texas Department of Insurance to forward, on my behalf, copies of my completed application form for the property proposed to be insured, and, if applicable, declination letter(s) or letter(s) of non-eligibility, and cancellation or non-renewal notice to the Department's contracting entity for the sole purpose of placement of application information on the electronic bulletin board to be accessed by prospective insurers participating in the Residential Property Insurance Market Assistance Program for the sole purpose of reviewing for quote and writing residential property insurance."

(C) If the applicant does not sign the application form thereby authorizing the Department to forward copies of the applicant's completed application form and documents as specified in subparagraph (A) of this paragraph, the application shall not be forwarded to the Department's contracting entity for placement on the electronic bulletin board to be accessed by prospective insurers and shall be returned to the originating agent.

(g) Educational initiatives.

(1) The Department may provide educational information to consumers, agents, and insurers through:

(A) the development and distribution of educational materials outlining the operation of the MAP;

(B) seminars and workshops;

(C) the print and electronic media, including public service announcements, press releases, TV and radio community programs, and local TV access stations. (D) coordination of speaking and training programs with trade associations and consumer organizations; and

(E) use of the Internet System.

(2) Participating insurers may provide information to their appointed agents for distribution to consumers.

(3) Participating insurers may include a brief description of the MAP with any cancellation or non-renewal notice issued on residential property insurance located in a designated underserved area.

(h) Complaints procedures.

(1) Complaints relating to the operation of the MAP shall be received and processed by the Department's MAP Division.

(2) The complaints shall be handled in accordance with the Department's standard complaints handling procedures.

(3) Until final disposition of the complaint, the complainant shall be notified quarterly by the Department's MAP Division of the status of the complaint.

(4) The MAP Executive Committee shall be notified as part of its review and monitoring of the MAP of all complaints relating to the operation of the MAP.

§5.10010. *Executive Committee.*

(a) Membership.

(1) Composition.

(A) The Executive Committee shall be composed of 11 members:

- (i) five members who represent the interests of insurers,
- (ii) four public members, and
- (iii) two members who are licensed local recording agents.

(B) The Commissioner or the Commissioner's designated representative shall be an ex officio member of the Executive Committee and must be present in every meeting of the Executive Committee.

(2) Qualifications.

(A) Insurer representatives.

(i) To be eligible to serve on the Executive Committee as a representative of insurers, a person must be a full-time employee of an authorized insurer.

(ii) The five insurer representatives appointed to the Executive Committee shall include one representative from each of the following: a large residential property insurer in Texas, a rural residential property insurer in Texas, a mid-sized residential property insurer in Texas, a small-sized residential property insurer in Texas, and a direct writer of residential property insurance in Texas.

(B) Public member representatives.

(i) To be eligible to serve on the Executive Committee as a public member representative, a person must be nominated by the Office of Public Insurance Counsel, a state or local consumer organization, or an elected official.

(ii) A public member representative may not be:

(I) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the Department;

(II) a person required to register with the Secretary of State under the Government Code, Chapter 305 (Registration of Lobbyists); or

(III) related to a person described by subclauses (I) and (II) of this clause within the second degree of affinity or consanguinity.

(C) Agent representatives. To be eligible to serve on the Executive Committee as a local recording agent representative, a person must be a licensed local recording agent.

(3) Required forms. The following forms must be completed and submitted to the Department before an individual may be considered for appointment to the Executive Committee:

(A) the Department's nomination form;

(B) the Department's background information form; and

(C) the Department's biographical sheet.

(4) Terms.

(A) Except as provided in subparagraph (B) of this paragraph, this paragraph shall govern the terms of office of Executive Committee members. Members of the Executive Committee shall serve staggered terms of six years. Each term shall run from January 1 of the calendar year following the expiration of the term of office to December 31 of the sixth calendar year following the year of appointment.

(B) Duly appointed members of the Executive Committee at the time of the adoption of this plan of operation shall draw lots to determine their initial terms of office. Such lots shall be drawn at the first meeting of the Executive Committee following the effective date of the adoption of this plan of operation. Two public member representatives, one agent representative, and two insurer representatives shall serve terms expiring on December 31, 1999. Two public member representatives, one agent representative, and three insurer representatives shall serve terms expiring on December 31, 2001.

(C) Members shall serve until the expiration of their terms or until a successor has been appointed unless:

(i) a member voluntarily resigns;

(ii) a member is removed for cause, as provided in this subsection, by at least eight members of the Executive Committee with approval of the Commissioner; or

(iii) a member is removed for cause, as provided in this subsection, by the Commissioner upon the Commissioner's own motion.

(D) Termination of the MAP shall constitute termination of the membership and operation of the Executive Committee.

(5) Replacement and reappointment. Any member resigning or removed from the Executive Committee or whose term expires shall be replaced by the Commissioner with another member representing the same constituency as the resigning member. Members

whose terms expire may be reappointed by the Commissioner for one additional term.

(6) Voting. A member of the Executive Committee must be present at an Executive Committee meeting or subcommittee meeting in order to vote on any matter. A member may designate an alternate to attend an Executive Committee meeting or subcommittee meeting in his/her absence, but such alternate shall not be allowed to vote on any matter unless such alternate is appointed by the Commissioner by order.

(7) Removal for cause. An Executive Committee member may be removed from membership on the Executive Committee for any one of the following reasons:

(A) failure of a member or appointed alternate for that member to attend two consecutive meetings of the Executive Committee or an assigned subcommittee in a 12-month period and the Commissioner approves such removal; such removal must be made no later than by the conclusion of the next Executive Committee meeting following the two consecutive absences;

(B) when in the judgment of at least eight members of the Executive Committee the best interests of the MAP would be served by the removal and replacement of an individual member and the Commissioner approves such removal; or

(C) when in the judgment of the Commissioner the best interests of the MAP would be served by the removal and replacement of an individual member.

(b) Election of officers. The following officers shall be elected by majority vote of the 11 members of the Executive Committee for two-year terms and shall perform the duties specified in this subsection. At least one of the officers shall be a public member representative.

(1) Chairperson. The chairperson shall:

(A) preside at all meetings of the Executive Committee;

(B) supervise the performance of the Executive Committee's functions as provided by Article 21.49-12 of the Insurance Code and this plan of operation;

(C) appoint all standing subcommittees and working groups;

(D) represent the Executive Committee on all matters before the Commissioner relating directly or indirectly to the MAP; and

(E) perform any other function as requested by the Commissioner pursuant to Article 21.49-12 of the Insurance Code.

(2) Vice chairperson. The vice chairperson shall:

(A) preside at meetings of the Executive Committee in the absence of the chairperson, and

(B) perform all other duties of the chairperson in the absence of the chairperson.

(3) Secretary. The secretary shall:

(A) be responsible for the posting of meeting notices and notification of members of Executive Committee meetings;

(B) be responsible for taping of Executive Committee meetings and the transcription of meeting tapes; and

(C) assist the chairperson and vice chairperson in other duties as requested.

(c) Functions.

(1) The Executive Committee shall oversee the operation of the MAP to ensure its compliance with Article 21.49-12 of the Insurance Code and this plan of operation, including:

(A) advising and consulting with the Commissioner with regard to the administration of MAP.

(B) recommending suitable amendments to this plan of operation to the Commissioner.

(C) reviewing the demand for and performance of the MAP six months following the approval of the plan of operation and at least annually thereafter, as necessary. After each such review, the Executive Committee shall report to the Commissioner as to the:

(i) necessity for continued operation of the voluntary MAP;

(ii) need for establishment of a mandatory MAP;

(iii) need for establishment of a FAIR Plan;

(iv) other recommendations the Executive Committee deems appropriate.

(2) The Executive Committee shall meet at least once quarterly and, subject to the call of the chairperson or at the written request to the chairperson of any three members of the Executive Committee, may meet more often if necessary.

(3) The Executive Committee shall not have any direct authority over any Department staff or the staff's day-to-day functions as Department employees.

(d) Subcommittees.

(1) The following standing subcommittees are necessary to carry out the functions of the MAP.

(A) Subcommittee for Monitoring the Operations of the MAP. This subcommittee shall be responsible for:

(i) reviewing the administrative operations of the MAP and identifying problems and presenting recommendations to the Executive Committee for consideration and resolution;

(ii) developing and proposing amendments to the plan of operation, resulting from the performance of the tasks specified in clause (i) of this subparagraph or assigned by the chairperson pursuant to clause (iii) of this subparagraph, to the Executive Committee for consideration for recommendation to the Commissioner; and

(iii) any other tasks assigned by the chairperson that are necessary to carry out the purposes of the MAP.

(B) Subcommittee on Data Collection. This subcommittee shall be responsible for:

(i) reviewing the data processed and collected pursuant to Article 21.49-12 of the Insurance Code and this plan of operation and presenting this data to the Executive Committee for periodic review and monitoring purposes;

(ii) assisting in determining criteria for designating underserved areas and for ongoing review and monitoring of underserved areas and for identifying problems and presenting recommendations to the Executive Committee for consideration and resolution; and

(iii) developing and proposing amendments to the plan of operation, resulting from the performance of the tasks specified in clauses (i) and (ii) of this subparagraph or assigned by the chairperson pursuant to clause (iv) of this subparagraph, to the Executive Committee for consideration for recommendation to the Commissioner.

(iv) any other tasks assigned by the chairperson that are necessary to carry out the purposes of the MAP.

(2) If necessary, temporary working groups may be appointed to carry out certain functions of the MAP. Such working groups may be established by the chairperson of the Executive Committee on the chairperson's own motion or at the request of the Commissioner.

(3) Each standing subcommittee and temporary working group shall contain at least one insurer representative, one agent representative, and one public member. The chairperson shall appoint subcommittee and working group members and chairpersons.

(4) Each standing subcommittee shall meet at least once quarterly and, subject to the call of the subcommittee chairperson, may meet more often if necessary.

(5) Each standing subcommittee shall submit a written report to each Executive Committee member within 10 calendar days following any subcommittee meeting. The report shall summarize the subcommittee's deliberation and its recommendations, if any.

(e) Open meetings. The MAP Executive Committee and its subcommittees and working groups are subject to the Open Meetings Act (Texas Government Code Chapter 551).

(1) Notice of meetings. Notice of all Executive Committee and subcommittee and working group meetings must be provided to the Secretary of State for posting for at least seven days before the day of the meeting pursuant to the Open Meetings Act. The notice must contain the date, hour, place, and subject of each meeting pursuant to the Open Meetings Act. The notice must be sufficient to apprise the general public of the subjects to be considered during the meeting.

(2) Minutes and tape recordings of meetings. The Executive Committee and each subcommittee and working group shall prepare and keep minutes or make a tape recording of each meeting. If minutes are prepared, such minutes shall state the subject of each deliberation and indicate each vote, decision, or other action taken. These minutes and tape recordings are public records and shall be available for public inspection and copying on request to the Department.

*§5.10011. Criteria and Procedures for Mandatory Participation by Insurers.*

(a) Purpose of this section. The purpose of this section is to specify:

(1) the criteria and procedures for implementation of mandatory participation by insurers on the Commissioner's own motion without the need for a recommendation by the Executive

Committee pursuant to Article 21.49-12 §2(b)(8) of the Insurance Code which provides that the Commissioner may make insurer participation in the MAP mandatory based on criteria contained in this plan of operation; and

(2) the criteria and procedures to be used by the Executive Committee in determining the need to recommend to the Commissioner implementation of mandatory participation by insurers pursuant to Article 21.49-12 §6(b) of the Insurance Code which provides that the Executive Committee, after periodic review, shall report to the Commissioner as to the need for establishment of a mandatory program.

(b) Implementation of mandatory MAP on Commissioner's own motion.

(1) The criteria and procedures for implementation of mandatory participation in the MAP by insurers on the Commissioner's own motion and without a recommendation from the Executive Committee are as specified in paragraphs (2) and (3) of this subsection.

(2) The Commissioner may, after notice and hearing, implement mandatory participation by insurers in the MAP if any of the circumstances specified in subparagraph (A) or subparagraph (B) of this paragraph occur. An application shall not be counted for purposes of subparagraphs (A) and (B) of this paragraph unless the application has been either on the electronic bulletin board for 90 days or a policy has been issued, whichever occurs first.

(A) Less than 60% of the eligible applications, either on a statewide basis, or in one or more designated underserved areas, or in unprotected portions of designated underserved areas, referred to participating insurers in the preceding 12 months, or in any other period as determined by the Commissioner, result in the issuance of at least one premium quote per application.

(B) Less than 40% of the eligible applications, either on a statewide basis, or in one or more designated underserved areas, or in unprotected portions of designated underserved areas, referred to participating insurers in the preceding 12 months, or in any other period as determined by the Commissioner, result in the issuance of residential property insurance policies.

(3) The Commissioner may, after notice and hearing, implement mandatory participation by insurers in one or more designated underserved areas in the MAP based on a determination that the purposes of the MAP pursuant to Article 21.49-12 of the Insurance Code are not being accomplished through voluntary participation by insurers.

(c) Executive Committee's determination of the need to recommend implementation of mandatory MAP.

(1) Periodic review. Pursuant to Article 21.49-12 §6(b) of the Insurance Code, the Executive Committee shall review the demand for and performance of the program six months following the approval of this plan of operation and at least annually thereafter, as necessary, and may make recommendations to the Commissioner on the need to implement mandatory participation by insurers in the MAP.

(2) Criteria for recommendation.

(A) The Executive Committee shall propose a recommendation for mandatory participation by insurers if the committee

determines that the level of voluntary participation by insurers is not sufficient to provide adequate opportunities for placement of residential property insurance through the program. The Executive Committee shall base its determination on the following factors:

(i) the number of applications eligible for referral received by the Department statewide, in each designated underserved area, and in unprotected portions of designated underserved areas;

(ii) the number of premium quotes made per application statewide, in each designated underserved area, and in unprotected portions of designated underserved areas;

(iii) the number of policies issued by participating insurers to MAP applicants statewide, in each designated underserved area, and in unprotected portions of designated underserved areas; and

(iv) any other factor that the Executive Committee determines reflects a lack of residential property insurance availability through the MAP.

(B) The Executive Committee may not make a recommendation for mandatory participation by insurers for any designated underserved area unless the MAP has been operational in that underserved area for at least six months.

(3) Procedures for consideration of recommendation.

(A) Consideration of a recommendation for mandatory participation by insurers in one or more designated underserved areas may be initiated as follows:

(i) the chairperson may place the item on the agenda for consideration; or

(ii) any three members of the Executive Committee may make a written request to the chairperson for consideration for mandatory participation by insurers. The chairperson shall place the item on the agenda for consideration at the next meeting of the Executive Committee.

(B) Consideration shall occur at the next meeting of the Executive Committee if the Subcommittee on Data Collection determines that any of the circumstances specified in clauses (i) or (ii) or (iii) of this subparagraph has occurred. An application shall not be counted for purposes of clauses (i) and (ii) of this subparagraph unless the application has been either on the electronic bulletin board for 90 days or a policy has been issued, whichever occurs first.

(i) Less than 60% of the eligible applications, either on a statewide basis, or in one or more designated underserved areas, or in unprotected portions of designated underserved areas, referred to participating insurers in the preceding 12 months resulted in the issuance of at least one premium quote per application.

(ii) Less than 40% of the eligible applications, either on a statewide basis, or in one or more designated underserved areas, or in unprotected portions of designated underserved areas, referred to participating insurers in the preceding 12 months resulted in the issuance of residential property insurance policies.

(iii) The number of participating insurers for any designated underserved area is less than five.

(4) Public comment.



(A) The public shall be given the opportunity to provide comment to the Executive Committee prior to the time the Executive Committee votes on the proposed recommendation.

(B) If written comments are solicited by the Executive Committee, such comments should be addressed to the Executive Committee, Market Assistance Program, Texas Department of Insurance.

(C) Any written comments that are received shall be attached to the copy of the minutes of the Executive Committee meeting at which the proposed recommendation is considered. If minutes are not prepared, the written comments shall be maintained with the tape recording of the meeting.

(D) The Executive Committee may, at its discretion, take oral comments from the public at any meeting.

(5) Possible actions. The Executive Committee may take action on the recommendation for mandatory participation as follows:

(A) the Executive Committee may withdraw the recommendation;

(B) the Executive Committee may defer action on the recommendation, pending further consideration;

(C) the Executive Committee may withdraw its recommendation and propose an amendment to this plan of operation; or

(D) the Executive Committee may recommend to the Commissioner the implementation of mandatory participation by insurers.

(6) Effect of withdrawal of recommendation. Withdrawal of a recommendation for mandatory participation by insurers for any designated underserved area shall not prohibit the Executive Committee from making another recommendation for the same or different designated underserved area at a later date.

(7) Approval of recommendation. A recommendation to the Commissioner by the Executive Committee for implementation of mandatory participation by insurers must:

(A) be approved by at least eight members of the Executive Committee;

(B) state that the Executive Committee believes the level of voluntary participation by insurers does not provide adequate opportunities for placement of residential property insurance to qualified applicants; and

(C) state the specific factors that are the basis for the recommendation.

(8) Commissioner's action on recommendation. Upon receipt of a recommendation from the Executive Committee, the Commissioner may, after notice and hearing, implement mandatory participation by insurers in one or more designated underserved areas in the MAP.

#### *§5.10012. Amendments to Plan of Operation.*

(a) Pursuant to Article 21.49-12 §2(a) of the Insurance Code, the Executive Committee on its own motion may submit, at any time, proposed suitable amendments to this plan of operation to the Commissioner. Such amendments must be approved by a majority of the members of the Executive Committee.

(b) Pursuant to Article 21.49-12 §2(a) of the Insurance Code, if the Executive Committee fails to submit suitable amendments to this plan of operation, Department staff may submit such amendments.

(c) Pursuant to the Texas Administrative Procedure Act, §2001.021, any interested person may request, by petition, consideration of proposed amendments to this plan of operation.

(d) Pursuant to Article 21.49-12 §2(a) of the Insurance Code, the Commissioner may, after notice and hearing, adopt proposed amendments to this plan of operation.

#### *§5.10013. Immunity from Liability.*

Pursuant to Article 21.49-12 §7 of the Insurance Code, the MAP, its executive committee members, participating insurers and agents are not personally liable for any act performed in good faith within the scope of the person's authority as determined under Article 21.49-12 or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious.

#### *§5.10014. Termination of MAP.*

(a) The Executive Committee may recommend termination of the MAP to the Commissioner, but not earlier than 48 months following the commencement date of the initial plan of operation. Such recommendation shall be made in writing to the Commissioner and supported by findings as to why the MAP should be terminated and must be approved by at least two-thirds of the members of the Executive Committee.

(b) Pursuant to Article 21.49-12 §6(b) of the Insurance Code, the MAP shall be terminated only upon approval of the Commissioner, but in no event earlier than 48 months following the commencement date of the initial plan of operation. Such termination by the Commissioner may be made only after notice and hearing.

#### *§5.10015. Severability.*

If a court of competent jurisdiction holds that any provision of this plan of operation is inconsistent with any statutes of this state, is unconstitutional, or for any reason is invalid, the remaining provisions shall remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this plan of operation to any person or insurer, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional, or for any reason is invalid, the provision shall remain in full effect as to other persons, insurers, or circumstances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608789

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-6327

#### **28 TAC §5.10016**

The Commissioner of Insurance proposes new §5.10016, concerning the adoption by reference of two new forms to be used

in the Residential Property Insurance Market Assistance Program (MAP) pursuant to the Insurance Code, Article 21.49-12. This proposal replaces an earlier proposal published in the May 3, 1996 issue of the Texas Register (21 TexReg 3778) which is being withdrawn in this issue. This new proposal is necessary because of the computerization of MAP operations, as proposed in §§5.10001-5.10015 published as a separate proposal in this issue. Article 21.49-12 was enacted by the Texas Legislature in 1995 (Acts 1995, 74th Legislature, page 3008, chapter 415 §5, effective August 28, 1995) to require the Commissioner to establish a voluntary market assistance program to assist consumers in obtaining residential property insurance coverage in underserved areas that are to be determined and designated by the Commissioner under separate rule. The rule proposal on designation of underserved areas has not yet been published in the Texas Register. The purpose of the MAP is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including rural areas.

The proposed Form TMAP-10, Texas MAP Application, a form to be used in applying for coverage through the MAP, is necessary to implement Article 21.49-12 §2(b)(1)-(2) and proposed new 28 TAC §5.10003 (relating to Definitions). Article 21.49-12 §2(b) requires the use of applications for assistance to apply for coverage through the MAP. Proposed new 28 TAC §5.10003 (relating to Definitions), which is proposed in a separate rule proposal published in this issue, requires that the MAP application form be promulgated by the Texas Department of Insurance (Department). The proposed form is to be used in applying for all types of residential property insurance coverage, including homeowners, dwelling, farm and ranch owners, and farm and ranch coverage. Under the previous forms proposal, which is withdrawn in this issue, four separate application forms were proposed—a form for each of the four types of residential property insurance coverage. Because of the proposed computerization of the MAP operations it is necessary to simplify and streamline the MAP application process with a single application form for all types of residential property insurance. While the proposed form does not require as much information as the previously proposed forms, it does provide enough information for an insurer to determine whether to select an application for further review and quote. The form will be part of the complete application packet to be submitted by the originating agent to the Department for forwarding to the Department's contracting entity for verification for compliance with requirements for completeness and eligibility and for placement on the electronic bulletin board, pursuant to proposed new 28 TAC §5.10009 (relating to Operations of the MAP), which is published in this issue. Participating insurers may select applications from the bulletin board for purposes of reviewing for quote and writing residential property insurance. The proposed application form requires the following to be provided: (i) originating agent's licensing and address information, including name, TDI identification number, telephone and fax numbers; (ii) applicant and co-applicant information, including name, mailing address, and military status; (iii) information on designated underserved area in which risk is located, including location zip code, class area, and county; (iv) location of risk, including if same as applicant's mailing address and if not, address and city; (v) rating informa-

tion, including fringe area if applicable, key rate and whether in protected or unprotected area, type of construction, policy form requested, dwelling and personal property coverage amounts, deductible, year built, structure type, usage type, owner or tenant occupancy; (vi) availability of Voluntary Inspection Program certification, pursuant to the Insurance Code, Article 5.33B; and (vii) MAP eligibility information. Applicants with risks located in areas that are designated by separate rule as underserved pursuant to both Articles 21.49-12 and 5.35-3 (Property Protection Program for Underserved Areas) of the Insurance Code will be able to select, in addition to the standard residential property insurance forms promulgated pursuant to Article 5.35 of the Insurance Code, property protection forms that were adopted by the Commissioner pursuant to Commissioner's Order No. 95-1285 (December 8, 1995). These forms will be available on the later of the effective date of the applicable residential property insurance benchmark rates determined pursuant to the December 20, 1995 rate hearing or the effective date of the rule designating the underserved areas to be served by the MAP pursuant to Article 21.49-12. The application form also contains the applicant's authorization to the Department to enable the Department to forward, on the applicant's behalf, the application packet to the Department's contracting entity for the sole purpose of placement of application information on the electronic bulletin board to be accessed by prospective insurers participating in the MAP for the sole purpose of reviewing for quote and writing residential property insurance for the applicant. This authorization is necessary because of the confidentiality requirements in Article 21.49-12 §5, which provide that the Department shall maintain as confidential all application files and related documents received under Article 21.49-12, except to certain specified persons and entities, including the originating and issuing agents, the applicant for their own file, or an insurer who agrees to insure the applicant. This authorization is promulgated pursuant to the Commissioner's rulemaking authority in Article 21.49-12 §8 to promulgate rules in addition to the plan of operation that are appropriate to accomplish the purposes of Article 21.49-12.

The proposed Form TMAP-11, Letter of Non-eligibility for Residential Property Insurance, is necessary to implement proposed new 28 TAC §5.10006 (relating to Eligibility for Referral), which is proposed in a separate rule proposal published in this issue. Under new 28 TAC §5.10006, it is proposed that a MAP applicant may submit a letter or letters of non-eligibility in lieu of the declination letter or letters required in Article 21.49-12 §2(b)(2). Article 21.49-12 §2(b)(2) requires (i) that each MAP application must be accompanied by a copy of a current nonrenewal or cancellation notice and a current declination letter from at least one other insurer writing the coverage sought and (ii) that applicants not having previous residential property insurance coverage must provide copies of current declination letters from at least two unaffiliated insurers writing the coverage sought. The proposed form is to be completed by a licensed local recording agent or by a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents. The agent or salaried representative must represent at least one licensed insurer who is actually writing residential property insurance in Texas. The form enables the agent or salaried representative to certify that, based on known underwriting guidelines, they are unable to place the applicant's risk

with a licensed insurer available to that agent or salaried representative. Other information to be included on the form is the name of the proposed insured; address of the residential risk proposed to be insured; originating agent's name, address, and TDI identification number; and the name or names of the insurers with whom the agent or salaried representative is unable to place the risk.

The forms are proposed to be effective on August 15, 1996. Copies of the proposed forms are available from the Office of the Chief Clerk, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Sylvia Gutierrez at (512) 463-6327.

Lyndon Anderson, associate commissioner, property and casualty division, has determined that for each year of the first five years the proposed section is in effect, any fiscal implications to state government are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and are not as result of the adoption, enforcement, or administration of the proposed section. Mr. Anderson has also determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications to units of local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

Mr. Anderson has also determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the proposed section is the availability of forms necessary to implement the Residential Property Insurance Market Assistance Program, which is operated pursuant to Article 21.49-12 of the Insurance Code. The proposed simplified application form (Form TMAP-10) will provide information necessary to the Department and the Department's contracting entity to determine if the risk complies with completeness and eligibility requirements in the proposed plan of operation and is, therefore, eligible for placement on an electronic bulletin board for selection by participating insurers for purposes of reviewing for quote and writing residential property insurance. The proposed letter of non-eligibility form (Form TMAP-11) is necessary to enable applicants who are unable to obtain declination letters from insurers, which are required of applicants to the MAP pursuant to Article 21.49-12 §2(b)(2), to have an alternative means to submit such declination letters. The proposed form will enable such letters to be completed by a licensed local recording agent or by a salaried representative for insurers whose plan of operation does not contemplate the use of local recording agents; the agent or salaried representative must represent at least one licensed insurer who is actually writing residential property insurance in Texas and must certify that, based on known underwriting guidelines, the agent or salaried representative is unable to place the applicant's property with a licensed insurer available to that insurer. With respect to proposed Form TMAP-11, the letter of non-eligibility, the costs to licensed local recording agents or salaried representatives to comply with the proposed section for each year of the first five years the proposed section will be in effect will be the cost of printing the one-page form and completing the form; these costs will vary based on the agent's or salaried representative's hourly business costs, how many policies the agent or salaried representative delivers through the MAP,

and the computerization of the agency. Any other possible economic costs to licensed local recording agents or salaried representatives to comply with the proposed section for each year of the first five years the proposed section will be in effect are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and not as a result of the adoption, enforcement, or administration of the proposed section. Any possible economic costs to participating insurers to comply with the proposed section for each year of the first five years the proposed section will be in effect are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and not as a result of the adoption, enforcement, or administration of the proposed section. There will be no effect on small business as a result of enforcing or administering the proposed section.

Comments on the proposal must be submitted within 30 days after publication of the proposal in the Texas Register to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC #113-2A, Austin, Texas, 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, P. O. Box 149104, MC #103-1A, Austin, Texas 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed pursuant to the Insurance Code, Articles 21.49-12 and 1.03A; and the Government Code §§2001.004-2001.038. Article 21.49-12 §1(a) provides that residential property insurance shall be provided through the MAP under a homeowners policy, a residential fire and allied lines policy, and a farm and ranch policy. Article 21.49-12 §2(b)(1)-(2) requires the use of applications for assistance to apply for coverage through the MAP. Article 21.49-12 §2(b)(2) requires that each MAP application must be accompanied by a copy of a current nonrenewal or cancellation notice and a current declination letter from at least one other insurer writing the coverage sought and that applicants not having previous residential property insurance coverage must provide copies of current declination letters from at least two unaffiliated insurers writing the coverage sought. Article 21.49-12 §8 authorizes the Commissioner to adopt rules in addition to the plan of operation that are appropriate to accomplish the purposes of Article 21.49-12. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

The following statutes are affected by this proposal: Insurance Code, Article 21.49-12.

*§5.10016. Forms Promulgated for Use in the Residential Property Insurance Market Assistance Program.*

The Commissioner of Insurance adopts by reference the forms specified in this section for use in the Residential Property Insurance Market Assistance Program, which is operated pursuant to Article 21.49-12 of the Insurance Code. Specimen copies of these forms are

available from the Texas Department of Insurance, MAP Division, MC #104-MA, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104. These forms are:

(1) Form TMAP-10-Texas MAP Application. Effective August 15, 1996.

(2) Form TMAP-11-Letter of Non-eligibility for Residential Property Insurance. Effective August 15, 1996.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9609094

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-6327



## Chapter 21. Trade Practices

### Subchapter I. Prohibited Agent Practices

#### 28 TAC §21.901

The Texas Department of Insurance proposes new §21.901, relating to the prohibition against solicitation or acceptance of a power of attorney for the purpose of placing insurance business by any person required to be licensed as an agent pursuant to the Insurance Code. The proposed new section is necessary to curb practices identified by the department as constituting unfair competition and unfair and deceptive practices by certain licensed agents. The proposed section provides that no person subject to the provisions of the section is permitted to require, solicit or accept any power of attorney from any applicant for any insurance coverage in this state, except for applications for premium financing on forms that include a power of attorney in favor of the premium financing company, and which comply with statutory provisions of the Insurance Code, Chapter 24, relating to the financing of insurance premiums. The proposed section also provides that the failure to comply with the provisions of the section constitutes unfair competition and unfair practices pursuant to the Insurance Code, Article 21.21, and is subject to the provisions of that article.

Mary Keller, senior associate commissioner for the legal and compliance activity of the Texas Department of Insurance, has determined that for each year of the first five years the section is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. Ms. Keller also has determined that there will be no effect on local employment or the local economy.

Mary Keller, senior associate commissioner for the legal and compliance activity of the Texas Department of Insurance, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administration and enforcement of the section will be more effective administrative regulation of insurance agent licensees, reduction or elimination of certain practices which

are unfair and potentially deceptive, and greater protection for the insurance consuming public in making informed choices in the process of procuring insurance coverages. There is no anticipated difference in cost of compliance between small and large businesses, or between business entities and natural persons resulting from the proposed new section. There is no anticipated economic cost resulting from the proposed new section to persons who are required to comply with the proposed new section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Alicia M. Fechtel, General Counsel and Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Mary Keller, Senior Associate Commissioner for Legal and Compliance, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The new section is proposed pursuant to the Insurance Code, Article 21.21, §13. Article 21.21, §13 provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices.

The proposed new section affects regulation pursuant to the following statutes: Insurance Code, Article 21.21

§21.901. *Prohibition Against Solicitation or Acceptance of Power of Attorney.*

(a) Scope and application. This section applies to any person required to be licensed as an agent pursuant to the provisions of the Insurance Code or other insurance law of this state. For purposes of this section, "person" means both natural persons and business association entities.

(b) Prohibition. No person subject to the provisions of this section is permitted, directly or indirectly, to require, solicit or accept any power of attorney to act as attorney-in-fact for any applicant for any insurance coverage in this state for purposes of placing, procuring, instituting, maintaining, canceling or nonrenewing any insurance coverage, or for any other act in connection with the placement or institution of such insurance coverage.

(c) Premium finance company provisions. The provisions of this section shall not prohibit any person subject to the provisions of this section from accepting applications for premium financing on premium financing agreement forms that include a power of attorney in favor of the premium financing company for purposes of canceling a financed insurance contract, so long as the power-of-attorney provisions comply with statutory provisions of the Insurance Code, Chapter 24, relating to the financing of insurance premiums.

(d) Declaration of unfair practice. The failure to comply with the provisions of this section shall constitute unfair competition and unfair practices pursuant to the Insurance Code, Article 21.21, and shall be subject to the provisions of that article.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

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Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance  
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For further information, please call: (512) 463-6327

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes the repeal of §15.425 and new §15.425, concerning replacement value of excluded resources, in its Medicaid Eligibility rule chapter. The purpose of the repeal and new section is to track Federal regulations. When an excluded resource is lost, stolen, or damaged, repair or replacement funds are excluded for nine months, with extensions allowed for good cause.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that DHS will be in compliance with federal regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care Division. Comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-190, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Subchapter D. Resources

##### 40 TAC §15.425

*(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code §§22.001-22.024 and §§32.001-32.042.

##### §15.425. Replacement Value of Excluded Resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608746  
Glenn Scott  
General Counsel, Legal Services  
Texas Department of Human Services  
Proposed date of adoption: September 1, 1996  
For further information, please call: (512) 438-3765

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code §§22.001-22.024 and §§32.001-32.042.

##### §15.425. Replacement Value of Excluded Resources.

(a) When an excluded resource is lost, damaged, or stolen, cash, including interest earned on the cash, or in-kind replacement the client receives from any source to repair or replace the resource is excluded. This exclusion applies if the cash and the interest are used to repair or replace the excluded resource within nine months of the date the client received the cash.

(b) Any of the cash and interest that is not used to repair or replace the excluded resource is counted as a resource beginning with the month after the nine-month period expires.

(c) The initial nine-month time period can be extended for a reasonable period up to an additional nine months when the client has good cause for not replacing or repairing the resource. Good cause exists when circumstances beyond the client's control prevent the repair or replacement or the contracting for the repair or replacement of the resource. The nine-month extension can only be granted if the client intends to use the cash or in-kind replacement items to repair or replace the lost, stolen, or damaged excluded resource and he has good cause for not having done so. If good cause is found, any unused cash and interest are counted as a resource beginning with the month after the good cause extension period expires.

(d) When the President of the United States declares a catastrophe to be a major disaster, the extension period described above can be extended for a reasonable period up to an additional 12 months if :

(1) the excluded resource is geographically located within the disaster area as defined by the presidential order;

(2) the client intends to repair or replace the excluded resource; and

(3) the client demonstrates good cause when he has not been able to repair or replace the excluded resource within the 18-month period.

(e) When an extension of the time period is made for good cause and the client changes his intent to repair or replace the excluded resources, funds previously held for replacement or repair are counted as a resource effective with the month that the client reports this change of intent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608744

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: September 1, 1996

For further information, please call: (512) 438-3765



## Part IV. Texas Department on Aging

### Chapter 254. Operation of the Texas Department on Aging

#### 40 TAC §§254.1, 254.3, 254.17, 254.15

The Texas Department on Aging proposes amendments to §§254.1, 254.3, 254.17, and 254.25, relating to the Operation of the Department. The proposed amendments establish new procedures and policies for imposing penalties and for providing rewards to ensure contractor compliance.

Frank Pennington, director of program and fiscal accountability, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Pennington has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated will be a better accountability of federal and state resources for the delivery of Older Americans Act programs.

Comments on the proposed amendments may be submitted to Frank Pennington, director of program and fiscal accountability, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendments are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

#### §254.1. Operation of the Texas Department on Aging.

(a)-(b) (No change.)

(c) Scope of Responsibility. The Department has the sole responsibility for providing services authorized under the Act to qualified older Texans, performing those general functions of the Department as specified in the Human Resources Code, Section 101.022, and performing other specific functions as identified in the Human

Resources Code, Chapter 101. In addition, the Department will establish policy, develop procedures, provide technical assistance, [and] conduct monitoring programs, **and give rewards and impose penalties** as may be necessary to ensure compliance with the laws and regulations adopted by reference under §254.3 of this title (relating to **Governing** [Support] Documents).

(d) Definitions. The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Action - A move taken by the Department to enforce contractor compliance with the terms of the contract, policies, procedures, standards, supplements or technical assistance memoranda, and the governing documents as specified in §254.3 of this title (relating to Governing Documents).**

(2) **Abuse, Neglect and/or Exploitation - Abuse, neglect and/or exploitation is any action or failure to take action which results in the endangerment of an individual's health, safety and welfare.**

(3) [(1)] Act-The Older Americans Act (42 USC, 3001 et seq).

(4) [(2)] Aging funds-All funds which are awarded by the Department or that are designated for the specific use of administering or providing services for older persons. Aging funds include Older Americans Act funds, USDA Cash-in-lieu of commodities, State of Texas general revenue funds awarded by the Department, program income funds, and other funds generated by the presence of or existence of Older Americans Act programs.

(5) **Amendment - A modification to a contract, plan and or budget.**

(6) **Appeal - The process, as specified in §254.13 (relating to Department Responsibilities for Imposing Sanctions), by which a contractor can request a review of the imposition of an administrative penalty or sanction.**

(7) [(3)] Area Agency on Aging-The office designated by the **contractor** [grantee] in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons. Referred to as the Area Agency.

(8) [(4)] Area Plan-The document submitted by an area agency to the Department in order to receive grants or contracts from the Department.

(9) [(5)] Assistant Secretary on Aging-The assistant secretary of the Administration on Aging, U.S. Department of Health and Human Services.

(10) [(6)] Board-The nine members appointed by the governor to direct the work of the Department.

(11) **Budget Period - The interval, usually 12 months, into which the period covered by a contract is divided for budgetary and funding purposes.**

(12) [(7)] Chairman-the presiding officer of the Board, appointed by the governor.

(13) **Contract - A legally binding and enforceable agreement by which goods, services, or property are to be provided in return for compensation.**

(14) **Contract Management** - a process whereby the quality of a contractor's program-related activities, financial management, and compliance with rules and regulations, as specified in 40 TAC, §§260.1 et seq of this title (relating to Area Agency on Aging Administrative Requirements) and §§270.1 et seq of this title (relating to General Service Requirements) are reviewed through performance of site visits, completion of reports, assessment of source documents and a variety of other means.

(15) **Contract Monitoring** - The on-site review of the quality of a contractor's program-related activities, financial management, and compliance with rules and regulations, as specified in 40 TAC, §§260.1 et seq (relating to Area Agency on Aging Administrative Requirements) and §§270.1 et seq (relating to General Service Requirements).

(16) **Contractor** - The performing agency in a contract with the Department. The word grantee when used in Department rules, procedures, or governing documents specified in §254.3, relating to Governing Documents, is synonymous with contractor.

(17) [(8)] **Department**-The Texas Department on Aging. The single state agency designated to develop and administer the state plan and be the focal point on aging philosophy, policies, procedures, and programs in the State of Texas.

(18) **Discretionary Funds** - Any funds received by the Department through appropriations, grant or private source that is made available to grantees or contractors for demonstration projects that would further the goals of the Department and aging network; or any unexpended funds from the administration of the state agency under the Older Americans Act that are made available to grantees or contractors by the Department for projects that further the goals of the Department and aging network.

(19) **Dispute Resolution Committee** - A five-member committee of the department to which a formal protest may be submitted by a contractor who is aggrieved in connection with the imposition of a penalty or penalties. The committee is comprised of the executive director, two department division directors not connected with the matter in question, the Citizen's Advisory Council chair, and the president of the Texas Association of Area Agencies on Aging, or designee. If the president of the Texas Association of Area Agencies on Aging is involved in the dispute, the president shall be required to designate another area agency director to serve.

(20) [(9)] **Employee**-A regular, acting, or exempt full or part-time employee of the Department.

(21) **Enforcement Fees** - A specified amount of money to be paid by the area agency contractor for non-compliance.

(22) [(10)] **Executive Director**-The chief executive and administrative officer of the Department appointed by the Board.

(23) **Final decision, or determination.** A decision which is written, and made by the Department's Executive Director or Dispute Resolution Committee, or an administrative law judge, or the U.S. Secretary on Aging, which determines the cause of action between the Department and a contractor and the final resolution.

(24) **Finding** - An area of non-compliance found during contract monitoring of the contractor and/or area agency on aging conducted by the Department.

(25) [(11)] **Float**-An amount of money represented by checks outstanding and in process of collection.

(26) **Formal protest** - the procedure used for requesting an appeal before the Department's Executive Director or Dispute Resolution Committee.

(27) **Fraud** - Fraud is an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself/herself or to some other person. It includes any act that constitutes fraud under applicable Federal or State law.

(28) **Full Reimbursement Basis** - Reimbursement of allowable expenses by the Department to a contractor following full payment of the obligation by the contractor.

(30) [(12)] **Funding formula**-A formula developed by the Department to distribute funds in an equitable manner based on the requirements of the Older Americans Act.

(31) [(13)] **Grant**-an award of financial assistance by the federal government or the Department to an eligible recipient. The word grant when used in Department rules, procedures, or governing documents specified in §254.3 of this title (relating to governing documents), is synonymous with contract.

(32) **Hearing** - A proceeding conducted before the Department's Dispute Resolution Committee, an administrative law judge, or the U.S. Secretary on Aging, during which a contractor protesting a Department action has right to be heard and to present arguments in support of the protest.

(33) [(14)] **Interest**-A percentage return on cash balances in interest-bearing accounts.

(34) **Mutual Agreement** - Consensus or resolution reached between a contractor and the Department regarding a proposed action against the contractor by the Department.

(35) **Notice** - A written letter sent from the Department to the contractor indicating an action taken or about to be taken and for what reason.

(36) [(15)] **Officer**-An officer of the Department.

(37) **Penalty** - The action taken by the Department or the sum to be forfeited by a contractor due to failure to comply with all responsibilities specified in subsection (c) of this section or to fulfill the terms of a contract.

(38) [(16)] **Planning and service area**-A geographic area of a state that is designated for purposes of planning, development, delivery, and overall administration of services under an area plan.

(39) [(17)] **Private donor**-One or more individuals or organizations that give non-public financial assistance to the

(40) **Proposed action** - A notification made by the Department to a contractor of its intent to impose a penalty or penalties for a specific violation or violations.

(41) **Public hearing** - a proceeding conducted by the Department and open to the public in a contractor's region or in the state at large, during which issues of fact regarding

Department rules or regulations are heard, witnesses may be heard, and parties being proceeded against (if applicable) have the right to be heard.

(42) [(18)] PSA-Planning and service area.

(43) **Report - An area plan, an area plan amendment, monitoring responses, budgets, budget amendments or any other report which is or may be required by the Department.**

(44) **Rewards - A reward is a benefit granted by the Department to an area agency on aging for exceptional performance.**

(45) [(19)] Right of first refusal-A provision in the Older Americans Act which requires the State agency to give the right of first refusal to a unit of general purpose local government if such unit can meet the requirements established in the Older Americans Act, Section 305(b)(5)(B).

(46) [(20)] State agency-The single state agency designated to develop and administer the State Plan and to be the focal point on aging in the State.

(47) [(21)] State plan-The document submitted by a state in order to receive grants from the Federal Government for Older Americans Act programs.

(48) [(22)] State regional planning commission or council of governments (COG) - A political subdivision of the State, the general purpose of which is to make studies and plans to guide the unified, far-reaching development of the area, to eliminate duplication, and to promote economy and efficiency in the coordinated development of the area.

(49) **Subcontractor - An agency with which the area agency contracts to provide services in the planning and service area. Any reference in the Department's policies, procedures, or governing documents to subrecipient or service provider are synonymous with subcontractor.**

(50)[(23)] TDoA-The Texas Department on Aging, referred to as the Department.

(51) **Termination of Contract- An action taken by the Department in which a contractor is notified that its contract is being terminated prior to the original contract expiration date, or as a result of penalties. Termination of the contract results in the dedesignation of the area agency on aging.**

(52) [(24)] Unit of general purpose local government-A political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or an Indian tribal organization.

(53) **Withholding of funds - an action taken by the department to either temporarily or permanently retain a specific portion of funds from a specified category of funding. Temporarily means beginning on the tenth calendar day following the date of notice to the contractor, and continuing until the violation is rectified but no longer than 90 days without further corrective action. Permanently means a decision not to release funds after final determination to retain funds withheld.**

(e)- (f) (No change.)

(g) Interagency Agreements. When an interagency agreement is needed, including those legislatively mandated, the Department shall provide a 30-day comment period for **contractors and subcontractors** [grantees and service providers] affected by the agreement prior to the execution of the agreement. The comment period shall begin five calendar days from the date the agreement is distributed by mail to concerned entities.

§254.3. **Governing [Support] Documents.**

(a) The Department adopts by reference the following **governing** [support] documents: [These will be the basic, comprehensive and governing documents for administration and management of Older Americans Act programs in the State of Texas. In instances where they appear to be contradictory, conflicting or divergent in their requirements, the Department shall issue policies, procedures, standards, rules, and technical assistance memorandums and/ or supplements to the documents. The Department will be the final authority in interpreting these documents and how the requirements of these documents will be implemented in the State of Texas as they pertain to programs for older adults. The Department will promulgate penalties and sanctions for and initiate appropriate corrective action to secure compliance with the governing documents identified in this chapter, and any policies, procedures, standards, rules, or supplements enacted by the Department. Copies of the documents are available from the Department, P. O. Box 12786, Austin, Texas 78711.]

(1) (No change.)

(2) [Part VI,] Department of Health and Human Services, Office of Human Development Services, 45 Consolidated Federal Regulation (CFR), Parts 1321, 1326 and 1328, Grants for State and Community Programs on Aging; and Grants to Indian Tribes and Organizations Serving Older Native Hawaiians for Supportive and Nutrition Services, and any amendments or revisions as issued thereto by the Department of Health and Human Services, Administrative on Aging.

(3) **Department of Health and Human Services, Office of Human Development Services, 45 Consolidated Federal Regulation, (CFR), Part 74, Administration of Grants, and any amendments or revisions as issued thereto by the Department of Health and Human Services, Administrative on Aging.**

(4) [(3)] 45 CFR, Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and any amendments or revisions as issued thereto by the Department of Health and Human Services.

(5) [(4)] Part III, Department of Labor, Employment and Training Administration 20 CFR, Part 626, 627, 628, 631, and 637, Job Training Partnership, and any amendments or revisions as issued thereto by the Department of Labor.

(6) [(5)] Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments, and any amendments or revisions as issued thereto by the Office of Management and Budget (OMB).

(7) [(6)] OMB Circular A-88, Indirect Cost Rates, Audit, and Audit Follow up at Educational Institutions and any amendments or revisions as issued thereto by the OMB.

(8) [(7)] OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments, and any amendments or revisions issued thereto by the OMB.



(9) [(8)] OMB Circular A-110, Grants and Agreements with Institutes of Higher Education and Other Non-Profit Organizations and any amendments or revisions thereto as issued by OMB.

(10) [(9)] OMB Circular A-122, Cost Principles for Non-Profit Organizations, and any amendments or revisions thereto as issued by OMB.

(11) [(10)] OMB Circular A-123, Internal Control Systems and any amendments or revisions thereto as issued by OMB.

(12) OMB Circular A-128, Audits of State and Local Governments.

(13) [(11)] OMB Circular A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions and any amendments or revisions thereto as issued by OMB.

(14) [(12)] The Civil Rights Act of 1991, Title I, and any amendments or revisions thereto as issued by the Congress of the United States.

(15) [(13)] Americans with Disabilities Act of 1990, as amended (P.L. 101-336), 42 USC, Section 12101 et seq., and any amendments or revisions thereto as issued by the Congress of the United States.

(16) [(14)] Document titled "the Texas Department on Aging State Plan," as amended.

(17) [(15)] Document titled "the Texas Department on Aging Strategic Plan," as amended.

(18) [(16)] Legislative Appropriations Act, currently enacted by the Texas Legislature.

(19) [(17)] State Office of Administrative Hearings, 1 TAC Chapter 155, Rules of Procedure.

(b) These will be the basic, comprehensive and governing documents for administration and management of Older Americans Act programs in the State of Texas. In instances where they appear to be contradictory, conflicting or divergent in their requirements, the Department shall issue policies, procedures, standards, rules, technical assistance memorandums and/ or supplements to the documents. The Department will be the final authority in interpreting these documents and how the requirements of these documents will be implemented in the State of Texas as they pertain to programs for older adults. The Department will promulgate penalties and sanctions and initiate appropriate corrective action to secure compliance with the governing documents identified in this chapter, and any policies, procedures, standards, rules, or supplements enacted by the Department. Copies of the documents are available from the Department, P. O. Box 12786, Austin, Texas 78711.

*§254.17. Appeal Procedures for Subcontractors, Vendors, [Service Providers]and Applicants Service Providers and Applicants.*

(a) **Definitions.** Definitions for the words and terms used in this section are located in §254.1 of this title (relating to the Operation of the Texas Department on Aging). For the purpose of this section, the following terms shall have these meanings:

(1) **Date of Notice** - The date of notification, and the date the facsimile transmission (FAX) is sent from the contractor to the subcontractor, or from the subcontractor to the contractor. If the notice is a notice of intent to appeal from the subcontractor,

and transmission by FAX is not possible, the notice shall be sent by certified or registered mail, return receipt requested. The date of notice shall be the date recorded on the return receipt, when delivered. If the notice is either transmitted or recorded as delivered after 5:00 p.m. on a business day, or on the weekend, the next business day will be considered the date of notice.

(2) **Hearing** - A proceeding conducted before the contractor during which a subcontractor appealing a contractor's action has the right to be heard and to present arguments in support of the appeal.

(3) **Subcontractor** - A subcontractor is defined in §254.1; in this section, vendors and applicants for subcontracts or vending agreements shall be referred to as subcontractors, and all shall have the same access to the procedures specified herein, as applicable.

(b) **Implementation of Hearing Procedures for Subcontractors.** It shall be the responsibility of the area agency on aging contractor to establish and implement procedures for conducting hearings for subcontractors seeking to appeal to the contractor through such means.

(c) [(a)] **Right to An Appeal:** Any subcontractor [service provider or applicant]has a right to appeal an action by a contractor[an area agency] that:

- (1) denies their application under an approved area plan;
- (2) terminates or does not renew a contract or subgrant;
- (3) issues a notice of noncompliance with federal and state requirements;
- (4) issues a notice of action to recover disallowed and/or questioned costs; and/or
- (5) issues a notice of noncompliance with contract stipulations mutually agreed upon by the area agency and the subcontractor.

(d) [(b)] **Notice of Intent to Appeal.** A subcontractor[petitioner] shall give notice of an intent to [an]appeal to both the contractor[area agency] and the Department within 30 calendar days from the date of notice of the contractor's action. [it receives the letter of notification of the area agency's action.] The notice of intent to appeal shall be in writing and must state with specificity the grounds upon which the action by the contractor [area agency] is appealed. Specific areas shall include, at a minimum;

- (1) the grounds upon which the subcontractor [petitioner] refutes the basis of the action or the authority of the contractor[area agency] to take such action;
- (2) a copy of the subcontractor's [agency's] letter of notification of action from the contractor[area agency];
- (3) the names of individuals and organizations involved in the appealed action[action appealed from];
- (4) a certified copy of the resolution or of the minutes of the meeting where the subcontractor's[petitioner's] governing body, by majority vote of a quorum, authorized the appeal and designated one or more persons to represent it during the appeal.

(e) [(c)] **Informal disposition.**

(1) Upon receipt of a notice from the subcontractor of an intent [of appeal,] the contractor[area agency] and the

**subcontractor** [petitioner] shall immediately schedule a meeting to attempt to informally resolve the issues in the appeal within 30 calendar days **from the date of notice**. [of receipt of the appeal from the appellant.]

(2) If the **contractor** [area agency] and the **subcontractor** [petitioner] resolve their dispute, they shall jointly notify the Department of this fact in writing within five work days following the **date of resolution** [of the dispute].

(3) If the dispute cannot be resolved informally, the **contractor** [area agency] and the **subcontractor** [petitioner] shall notify the Department of this fact in writing within ten working days following the end of the informal resolution period, by certified or registered mail return receipt requested.

(4) [The area agency] **Within ten working days following the end of the informal resolution period, the contractor shall send the subcontractor a notice for a hearing to be conducted before the contractor. The notice shall be sent by certified or registered mail, return receipt requested. Within five working days of receipt of such notice,** [and] the **contractor and the subcontractor** [petitioner] shall establish a [formal] hearing date [at least five working days after the petitioner receives the notice for a formal hearing].

(5) [The area agency shall furnish petitioner within] **Within ten working days of the established date for the [formal] hearing, the contractor shall furnish the subcontractor the following documentation:**

- (A) the current approved area plan;
- (B) the minutes of the meeting of the area agency's governing body at which the appeal was considered and action taken;
- (C) the minutes of the meeting of the area agency's advisory council at which the appeal was considered and action recommended;
- (D) area agency memoranda, staff reports, and evaluations relevant to the action;
- (E) the criteria used in awarding the contract;
- (F) the criteria used in determining that an action was necessary, and
- [(G) a concise statement identifying each disputed issue.]

(f) [(d)] [Formal hearing.] **Referral to the Department.** If the **contractor** [area agency] and the **subcontractor** [petitioner] do not formally resolve [their] **the** dispute the matter shall be referred to the [Texas] Department [on Aging for conduct of a formal hearing], **requesting final determination.** The request [for hearing] shall be signed by the executive officer of the **contractor** [grantee] agency and be accompanied by the documents specified in subsection (e) **(5) (B) - (F)** [(c)(5)(B)-(G)] of this section **relating to informal disposition.** [relating to Documentation)].

(g) [(e)] **Department Responses to a Request for Final Determination** [Notice of Proposed Action by the Texas Department on Aging.]

(1) Upon receipt of a request for **final determination** [hearing], the Department shall, within **five** [ten] calendar days, **first determine whether the matter is appropriate for**

**consideration at the Department's level, and if so, whether the matter is appropriate for the Department's Dispute Resolution Committee, or a hearing before an administrative law judge.** [set a date for the hearing. ]

(2) The Department shall, within five workdays following the establishment of the **appropriateness of the request, and/or the appropriate appeal level,** [hearing date,] issue a written notice to the **contractor,** [area agency,] **and to the subcontractor informing them of this determination. If the matter is determined appropriate for consideration by the Department, the Department shall carry out the procedures, and include in the written notice, the information outlined in §254.15(1) of this title (relating to Department responses to a request for an appeal).** [petitioner, and all other parties which shall include:

[(A) a statement of time, date, and location of the hearing;

[(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

[(C) a reference to the particular sections of statutes, regulations, and rules involved; and

[(D) a summary of the reasons for the proposed action that is being appealed and the evidence on which the proposed action is based.

[(E) a statement that the grantee has the opportunity to establish that the findings cited by the Department in the official notification of proposed action are not valid.

[(F) Notice shall be sent by registered or certified mail, return receipt requested. ]

**(3) Each request for final determination shall be subject to the applicable procedures outlined in §254.15, relating to Appeal Procedures for Area Agency on Aging Contractors. For purposes of this section, the term contractor used in §254.15, shall also apply to subcontractors, as used in this section.**

[(f) Conduct of Hearing. The proceedings and conduct of the hearing shall follow the rules promulgated in Title 1, Part VII, State Office of Administrative Hearings, Chapter 155, Rules of Procedure, et seq. The hearing examiner shall issue a decision on behalf of the Department. ]

**§254.25. Department Responsibilities for Carryover of Unexpended Department Awarded Funds.**

(a) Purpose. This section establishes the responsibilities of the Department for administering the carryover of unexpended funds by the **contractor** [grantee agency] and applies to all funds awarded by the Department.

(b) Approval of Carryover of Older Americans Act Funds. It is the position of the Department that unexpended **contract** [grant] funds shall be kept to a minimum. Approval for carryover of any Older Americans Act funds issued by the Department shall require adequate justification and shall not exceed 5.0% of the **contract** [grant] funds awarded during the **contract** [grant] period.

(1) Approval shall be based upon timely submission of adequate justification, [as defined in §260.2(e) of this title (relating to Area Agency Accountability)] and include, but not be limited to, submission of acceptable narrative and financial information as required by the Department.

(2) Approval shall be considered separately for each title of the Older Americans Act and each **contract** [grant] awarded through a funding formula from all other funding sources.

(3)-(4) (No change.)

(5) Approval shall be granted for carryover of **unexpended** Older Americans Act funds and any other **unexpended** funds issued by the department when obligation authority from the funding sources permits.

(c) Approval of Carryover of Other **Unexpended** Funds. It is the policy of the Department to approve **unexpended** funds awarded by the department, other than Older Americans Act funds, as carryover with adequate justification. [(1)] Approval shall be based upon timely submission of adequate justification. The **contractor** [grantee] shall:

(1) [(A)] submit acceptable narrative and financial information as required by the Department;

(2) [(B)] have met the preponderance of the program objectives defined by the Department and described by the **contractor** [grantee] in the current approved area plan, or approved proposal for those funds awarded through a request for proposal (RFP) process;

(3) [(C)] have expended not less than:

(A) [(i)] 90% of the awarded funds, if awarded during the first quarter of the **contract** [grant] period; or

(B) [(ii)] 70% of the awarded funds, if awarded during the second quarter of the **contract** [grant] period; or

(C) [(iii)] 50% of the awarded funds, if awarded during the third quarter of the **contract** [grant] period; or

(D) [(iv)] 30% of the awarded funds, if awarded during the fourth quarter of the **contract** [grant] period.

[(2) Approval shall be based upon the criteria in subsection (b)(2)-(5) of this section (relating to Criteria for Approval of Carryover Funds).]

(d) Funds ineligible for carryover. The Department shall not approve the following for carryover:

(1) (No Change.)

(2) unexpended adequate proportion funds for eligible in-home services, access services, and legal services, unless the **contractor** [grantee] has received a waiver from the requirements in accordance with Department procedures; and/or

(3) (No Change.)

(e) Carryover Reallocation Pools. The Department shall:

(1) establish separate reallocation pools of unexpended funds from each of the following sources:

(A)-(B) (No Change.)

(C) any other funds issued by the Department through a separate funding formula and not approved for carryover. **Unexpended funds** [Funds] from each funding source shall become part of a separate reallocation pool.

(2) award carryover funds in the same manner as the original funds were awarded, exclusive of consideration from any applicable service and administration bases. **Any contractor that**

**fails to meet, annual programmatic and financial performance targets, (units, persons, unit costs) as outlined in the area agency's approved area plan without reason acceptable to the department shall not participate in the distribution of funds in the reallocation pools. A variance of up to 5% is allowable.** [Any grantee agency not meeting all the performance measures and financial standards shall not participate in the distribution of funds in the reallocation pools;]

(3) (No Change.)

(f) Notification of **Available Funds**. [Grant Award.]

A notification of **available funds** [grant award] for any and all reallocated funds shall be issued by the Department not later than 60 calendar days following the end of the 90 day closeout period. Such notices of **available funds** [grant award] shall authorize the use of funds for the specific period of time for which the **funds are** [award is] issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 19, 1996.

TRD-9608810

Mary Sapp

Executive Director

Texas Department on Aging

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 444-2727

#### 40 TAC §254.13, §254.15

*(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department on Aging or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department on Aging proposes the repeal of §254.13 and §254.15, concerning the operations of the Texas Department Aging. These sections are being repealed because a complete revision has been proposed to clarify the department's responsibilities for imposing sanctions and the appeal procedures for service providers and applicants.

Frank Pennington, director of program and fiscal accountability, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Pennington has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be a better understanding of the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Frank Pennington, director of program and fiscal accountability, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The repeals are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

*§254.13. Department Responsibilities for Imposing Sanctions.*

*§254.15. Hearing Procedures for Area Agencies on Aging Grantees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 19, 1996.

TRD-9608807

Mary Sapp

Executive Director

Texas Department on Aging

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 444-2727



The Texas Department on Aging proposes new §254.13 and §254.15, relating to the Compliance with Contractor Responsibilities, Rewards and Penalties. This section is a complete revision of the previous rule relating the Department's responsibilities for imposing sanctions and has been proposed to clarify the rewards available for compliance with a contract and the penalties for noncompliance with contract terms and conditions.

Frank Pennington, director of program and fiscal accountability, has determined that for the first five-year period the rules are in effect there may be fiscal implications; however, the degree of impact to state or local governments cannot be determined.

Mr. Pennington has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be a better understanding of the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new rule. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Frank Pennington, director of program and fiscal accountability, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new rules are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

*§254.13. Compliance with Contractor Responsibilities, Rewards and Penalties.*

(a) Background. To the extent feasible, and subject to the availability of funds and other resources, the Department will give

rewards to those area agencies on aging which the Department finds have demonstrated exceptional performance. When a contractor has failed to comply with the terms of a contract which governs the use of monies appropriated under that contract, or with Federal and/or State statutes, codes, rules and/or policies, procedures, standards, supplements, or technical assistance memoranda which detail the legal obligations and responsibilities incurred as a result of agreeing to the terms of a grant or contract, the Texas Department on Aging may take actions as may be legally available and appropriate to the circumstance. It is the intent of this rule to outline the rewards available for compliance with a contract and the penalties for noncompliance with contract terms and conditions.

(b) Definitions. Definitions for the words and terms used in this section are located in §254.1 of this title (relating to the Operation of the Texas Department On Aging).

(c) Contractor Responsibilities. A contractor is responsible for compliance with the terms of the contract and shall:

(1) comply, as applicable, with all governing documents set forth in §254.3 of this title (relating to Governing Documents);

(2) comply with the requirements of approved contracts or plans;

(3) meet the administrative and service requirements as published by the Department, including but not limited to all budget documents and required reporting in a timely, complete, and accurate manner, consistent with §260.1 of this title, relating to Area Agency on Aging Administrative Requirements, and §260.2 of this title, relating to Area Agency on Aging Fiscal Responsibilities;

(4) respond to requests by the Department for specific corrective action as a result of:

(A) the area plan or area plan amendment review;

(B) program and fiscal reviews, monitoring and assessments;

(C) investigation and response to complaints;

(D) erroneous or incomplete information on program performance or financial reports; and,

(E) other administrative requirements which may be necessary to administer contracts funded by the Department.

(d) Department responsibilities. The Department shall evaluate area agency performance and take appropriate action to reward and/or secure the continuing administrative compliance of the contractor.

(e) Rewards. Rewards for exceptional performance will be determined by the department based on the results of annual monitoring of an area agency on aging by the department. Actual rewards are not limited to but may include any one or a combination of: notification of outstanding performance to the public in the Area Agency's region and/or the Board on Aging; scholarships to conferences, or leadership workshops; payment of instate travel or purchase of computer equipment; and decreased frequency of monitoring and other review processes.

(f) Administrative Violations. Administrative Violations shall result in disciplinary action as specified in this section, unless the violation was due to an act of God or action by the Department. Violations will be documented and greater levels of administrative

penalties may be assigned accordingly, whether or not a penalty has been imposed for a violation. A contractor commits a violation if the contractor:

(1) fails to submit a report required by the department by the due date or approved extension. This violation is subject to a level one penalty;

(2) submits a report to the department which is found during desk review to be incomplete. This violation is subject to a level one penalty;

(3) submits a report to the department which is found during desk review to contain inaccurate information. This violation is subject to a level one penalty;

(4) Fails to submit responses to all compliance issues raised in monitoring reports which address the findings and achieve compliance. This violation is subject to a level one penalty;

(5) Fails to comply with the department's requirements related to the Cash Management Improvement Act, a Treasury-State agreement (CMIA), 31 CFR Part 205, for the first time within a budget period. This violation is subject to a level one penalty;

(6) Fails to comply with §260.1 of this title, relating to Area Agency on Agency Administrative Requirements, subsections (c), (d), (l), and/or (n) of this section. This violation is subject to a level one penalty;

(7) Wholly fails to submit a required report for a reporting period. This violation is subject to a level two penalty;

(8) commits a third violation, as defined in paragraphs (1)-(4) of this subsection, within one budget period; This violation is subject to a level two penalty;

(9) Fails to rectify a violation subject to a level one penalty within the time specified in the letter of deficiency, which will be not less than 7 calendar days following notice. This violation is subject to a level two penalty;

(10) Fails to rectify and achieve compliance in addressing monitoring report findings within the time frames established in the report. This violation is subject to a level two penalty;

(11) Fails to rectify all Independent Audit findings and/or questioned costs related, directly or as cross-cutting issues, to the Department within the time frames established by law, rule, or regulation. This violation is subject to a level two penalty;

(12) Commits a second violation, within a budget period, of the Department's requirements related to the Cash Management Improvement Act, a Treasury-State agreement (CMIA), 31 CFR Part 205. This violation is subject to a level two penalty;

(13) Has not corrected or has repeated an action which was previously cited as a finding in a monitoring report issued by the department, as revealed in on site monitoring. This violation is subject to a level two penalty;

(14) Fails to comply with §260.1 of this title, relating to Area Agency on Agency Administrative Requirements, subsections (i),(j),(o), and/or (p) of this section. This violation is subject to a level two penalty;

(15) Fails to meet annual programmatic and financial performance targets, (units, persons, unit costs), as outlined in the

area agency's approved area plan without reason acceptable to the department. A variance of up to 5% is allowable. Violation occurs if achievement of the target amounts is off by greater than 5% up to 10%. This violation is subject to a level two penalty;

(16) Fails to rectify reported threats to the health and safety of program participants, within the time frame specified by the department. This violation is subject to a level two penalty;

(17) Fails to rectify any violation subject to a level two penalty, within the time specified in the letter of deficiency which will be not less than 15 calendar days following notice. This violation is subject to a level three penalty;

(18) Fails to rectify a violation identified in paragraph (16) of this subsection, within 72 hours of the date of notice to the contractor of the violation. This violation is subject to a level three penalty.

(19) Fails to comply with §260.1 of this title, relating to Area Agency on Agency Administrative Requirements, subsections (f) and/or (l) of this section. This violation is subject to a level three penalty;

(20) Fails to meet, annual programmatic and financial performance targets, (units, persons, unit costs) as outlined in the area agency's approved area plan without reason acceptable to the department. A variance of up to 5% is allowable. Violation occurs if achievement of the target amounts is off by greater than 10%. This violation is subject to a level three penalty;

(21) Wholly fails to submit an independent audit in accordance with the requirements of OMB Circular A-128 or A-133, as applicable, within the time frame established within such circular for submission. This violation is subject to a level three penalty;

(22) Fails to rectify any violation subject to a level three penalty, within the time specified in the letter of deficiency which will be not less than 15 calendar days following notice, with the exception of paragraphs (1)-(4) and (7) of this subsection. This violation is subject to a level four penalty;

(23) Commits two violations subject to a level three penalty, within any two consecutive years. This violation is subject to a level four penalty;

(24) Commits three violations subject to a level three penalty, within any five successive years. This violation is subject to a level four penalty;

(25) Commits six violations subject to a level two penalty, within a budget year. This violation is subject to a level four penalty;

(26) Fails to demonstrate acceptable performance of any service performed directly by the contractor or its subcontractors in accordance with rules and regulations covering the conduct of such service as evidenced through the contract management process. This violation is subject to a level four penalty;

(27) Fails to appropriately report and respond to allegations of abuse, neglect or exploitation, allegations of fraud or ethics code violations. This violation is subject to a level four penalty;

(28) Fails to pay an enforcement fee imposed as a penalty. This violation is subject to a level four penalty.

(g) Penalties. The Department may impose anyone or a combination of the following penalties.

(1) Level One Penalties. The following shall be considered level one penalties:

(A) A letter of deficiency sent to the contractor after the first time a report is submitted as specified in subsection (f)(1)-(4) of this section; A letter of deficiency sent to the contractor after the second time a report is submitted as specified in subsection (f)(1)-(4) of this section. If the late report is received within the three days, a violation will be documented but this penalty will not be imposed.

(B) Assessment of an enforcement fee of \$50 per calendar day, beginning the fourth calendar day following a contractor's failure to submit a report as specified in subsection (f)(1)-(4) of this section may be assessed, until the violation is rectified.

(C) A letter of deficiency and a flat enforcement fee of \$50 may be imposed for a contractor's first failure to comply with the department's requirements related to the Cash Management Improvement Act, a Treasury-State agreement (CMIA), 31 CFR Part 205. The enforcement fee shall be payable by the date specified in the letter of notification.

(D) A letter of deficiency which requires the submission of a plan including a time line for the implementation of corrective action which is acceptable to the department. The plan must be received by the department within 15 working days of the date of notice.

(2) Level Two Penalties. The following shall be considered level two penalties:

(A) Assessment of an enforcement fee of \$100 per calendar day, beginning on the date of notice. This penalty is applicable for a third violation as specified in subsection (f)(1)-(4) of this section and may be assessed until the violation is rectified.

(B) Temporarily withholding a specific portion of the federal and state funds contracted to the contractor, in a specified category of funding relating to the violation. Once compliance has been demonstrated, funds will be released to the contractor no later than twenty working days from the date of demonstrated compliance. If the matter is not rectified by the end of the temporary 90-day period, the Department will notify the contractor of intent to impose additional penalties. See Section 306(e)(1) of the Older Americans Act.

(C) A letter of deficiency and imposition of a level two penalty which requires the submission of a plan including a time line for the implementation of corrective action, which is acceptable to the department. The plan must be received by the department within 15 working days of the date of notice.

(D) The department may require increased detail in reporting requirements and/or place the contractor on an accelerated schedule of monitoring.

(3) Level Three Penalties. The following shall be considered level three penalties:

(A) Continuation of the assessment of an enforcement fee of \$100 per calendar day originated as a level two penalty, as specified in paragraph (2)(A) of this subsection.

(B) Written notification from the department that the contractor must stop contracting with a specified provider of services within 45 days of notification, and either find another service provider

or assume service delivery directly until another provider can be obtained.

(C) Continued temporary withholding of a specific portion of the federal and state funds contracted to the contractor, in a specified category of funding relating to the violation, initiated as a level two penalty as specified in paragraph (2)(A) of this subsection, until rectified but no longer than 90 days, pending final determination of withholding funds, as specified in paragraph (4)(C) of this subsection. Once compliance has been demonstrated, funds will be released to the contractor no later than twenty working days from the date of demonstrated compliance. If the matter is not rectified by the end of the 90-day period, the Department will notify the contractor of intent to impose additional penalties. See Section 306(e)(1) of the Older Americans Act, relating to area plans.

(D) Temporarily withholding a specific portion of the federal and state funds contracted to the contractor, in a specified category of funding relating to the violation. Once compliance has been demonstrated, funds will be released to the contractor no later than 20 working days from the date of demonstrated compliance. If the matter is not rectified by the end of the temporary 90-day period, the Department will notify the contractor of intent to impose additional penalties. See Section 306(e)(1) of the Older Americans Act.

(E) A written notice from the department to the contractor prohibiting the contractor from being awarded any subsequent discretionary funding from the department for the remainder of the current contract year and two successive years;

(F) Placing a contractor on full reimbursement basis for the remainder of the current contract year and one successive year for all requests for funds.

(4) The following shall be considered level four penalties:

(A) In cases of non-compliance with service performance requirements and standards identified in the Department's rules:

(i) written notice by the department to the contractor to: suspend or cause to be suspended service delivery of the service(s) in non-compliance; corresponding reduction of the awarded contract amount; and required submission of an amendment to the area plan;

(ii) where the area agency is the direct service provider, written notice will be sent by the department to the contractor to suspend service delivery by a specified date. In such cases, and to prevent or minimize service interruption, the department will find another service provider or assume provision of the service directly. Funds for the service will be withheld from the contractor, until non-compliance is rectified but no longer than 90 days, pending final determination of withholding funds, as specified subparagraph (B) of this paragraph. Once compliance has been demonstrated, funds will be released to the contractor no later than twenty working days from the date of demonstrated compliance. If the matter is not rectified by the end of the 90-day period, the department will notify the contractor of intent to impose additional penalties.

(B) Reduction of awarded contract amount. A contract amount may be reduced for such reasons as a final determination regarding permanently withholding funds, or for required suspension of services. When a final determination is made not to return funds

withheld, the department will also reduce the contract amount based on funding for the service in question and either directly administer the service and/or find another service provider to administer the service within the planning and service area. See Section 306(e)(1),(2) and (3) of the Older Americans Act, relating to area plans, and §254.15 of this title (relating to appeal procedures for Area Agency on Aging Contractors).

(C) Deobligation of current year funds due to non-performance determined in contract monitoring and/or review of independent audit.

(D) Termination of the contract and withdrawal of an area agency on aging designation may be initiated by the department whenever the department, for specific reasons and after reasonable notice and opportunity for a hearing as provided in §254.15 of this title, relating to Appeal Procedures for Area Agency on Aging Contractors, finds that:

(i) the contractor does not meet the requirements of federal or state regulations, as specified in §254.3, relating to Governing Documents, in the current or previous funding periods; or

(ii) the contractor has failed to comply with the terms of a contract which governs the use of monies appropriated under that contract, or with Federal and/or State statutes, codes, rules and/or policies, procedures, standards, supplements, or technical assistance memoranda which detail the legal obligations and responsibilities incurred as a result of agreeing to the terms of a contract.

(iii) the area plan or area plan amendment is not approved.

(iv) there is substantial failure to meet the administrative, program or service requirements as specified in §260.1 of this title (relating to Area Agency on Aging Administrative Requirements), §260.2 of this title (relating to Area Agency Fiscal Responsibilities), and §§270.1 et seq of this title (relating to Service Requirements), in the current or previous budget period.

(v) the area agency has failed to rectify a lesser penalty within a budget year or the time specified in the letter of deficiency.

(vi) there is an emergency situation, including but not limited to serious threats to the health and welfare of elderly in the planning and service area and conviction of fraud. If, in the Department's judgement, an emergency situation exists, the dedesignation/termination may be made effective immediately and so stated in the letter of notification to the contractor. Emergency dedesignation does not preclude processing appeals under §254.15 of this title, related to Appeal Procedures for Area Agency on Aging Contractors.

(h) Fees. All enforcement fees assessed under this section shall be paid from local, non-match funds only and shall be excluded from calculation of any indirect rate established by the contractor.

(i) Fraud. All allegations of Fraud, will be investigated by the Department. Complaint's will be referred to the appropriate agency for action. Since payments to contractors are made from both State and Federal funds, submission of false or fraudulent claims, statements, documents, or the concealment of a material fact may be prosecuted as a felony in either Federal or State Court.

(1) The Department will inform the contractor of the exact nature of the complaint and may require the contractor to conduct its own internal investigation.

(2) The Department will document its investigations' findings and conclusions and inform the contractor and the complainant of the results. If an investigation indicates there is a substantiated situation in which there is a question of fraud, the department will require the contractor to take corrective action, may assess penalties under this section and/or refer the complaint to Texas Attorney General's Office, the United States Attorney Generals Office and other appropriate law enforcement agencies.

(j) Ethics Code Violations. Violations of the Ethics Code requirements, Texas Government Code 572, related to ethics, as specified in the contract, or unacceptable ethical conduct will be investigated by the department and referred by the department to the appropriate law enforcement agency. Ethics violations may result in criminal prosecution and may be pursued based on the provisions of the Texas Government Code, the Election Code, the Penal code, or other pertinent laws and regulations.

(1) The Department will inform the contractor of the exact nature of the complaint and may require the contractor to conduct its own internal investigation.

(2) The Department will document its investigations' findings and conclusions and inform the contractor and the complainant of the results. If an investigation indicates there is a substantiated situation in which there is a question of ethics code violations, the department will require the contractor to take corrective action, may assess penalties under this section and/or refer the complaint to appropriate law enforcement agencies.

(k) Abuse, Neglect, and Exploitation. Abuse, Neglect, exploitation and other violations of client rights will be reported by the Department to the appropriate authorities. Such actions are a violation of state law and are punishable by criminal prosecution.

(l) Other remedies. The department may take and/or impose other remedies that are legally available based on the circumstances involved.

(m) Date of Notice. For purposes of this section, the date the facsimile transmission (FAX) notice is sent to the contractor shall be considered the date of notification, if transmitted by 5:00 p.m. on a business day. If transmitted after hours or on the weekend, the next business day will be considered the date of notice.

(n) Notice Transmittal. All administrative violation and penalty notices shall be sent by the department:

(1) via facsimile (FAX) transmission, and

(2) via letter by regular mail for violations subject to a level one and level two penalty or certified mail, return receipt requested, for a violation subject to a level three or level four penalty.

(3) Notice will be addressed to:

(A) the Contractor's Executive Director or designated representative.

(B) the Director of the Area Agency on Aging,

(C) the Chairman of the Contractor's Board of Directors.

(o) Date of Satisfaction, Remedy, Rectification, Resolution. The department will send notice to the contractor specifying the date the violation was rectified. Such notice will include the basis for the determination.

(p) Procedures for the Withdrawal of Area Agency on Aging Designation.

(1) If the department proceeds to withdrawal of designation, action shall be taken to assure that appropriate individuals and agencies are informed in advance of the reasons which make it necessary. Correspondence shall be prepared summarizing the basis for the action. This correspondence shall be mailed, by certified mail, return receipt requested, to the contractor and other interested parties, including subcontractors or vendors for the contract involved. Such notification will be sent at least ten working days prior to the effective date of the dedesignation as an area agency on aging. Such notification shall explain the right of the contractor to appeal such decisions as outlined in §254.15, relating to Department Responsibilities for Imposing Sanctions.

(2) Procedures following withdrawal of designation. If the department withdraws an area agency's designation, the department shall take the following action:

(A) Notify appropriate entities. The department shall notify, by certified mail, return receipt requested, the Assistant Secretary on Aging, Department of Health and Human Services, and those individuals and agencies specified in paragraph (1) of this subsection.

(B) Continue services. The department shall provide a plan for the continuity of services in the affected planning and service area and will:

(i) discontinue reimbursement to the contractors concerned;

(ii) notify service providers to submit requests for reimbursement directly to the Texas Department on Aging or to the designated contractor;

(C) place a notice in local and regional newspapers advising that claims against the contractor related to Older Americans Act programs shall be referred to the Texas Department on Aging; and

(D) designate an interim or new area agency in the planning and service area in a timely manner.

(3) Administration by the Department. If necessary to ensure continuity of services in a PSA, the department may for a period of up to 180 days after withdrawing designation of an area agency:

(A) perform the area agency responsibilities;

(B) assign the responsibilities of the area agency to another agency in the planning and service area;

(C) assign the responsibility to an area agency on aging in a contiguous planning and service area;

(D) if necessary, may request an extension of the 180-day limit from the assistant secretary. The Assistant Secretary may extend the period an additional 180 days if the need for the extension is demonstrated.

(q) Appeals. Appeals will be provided as specified in §254.15 of this title, relating to Appeal Procedures for Area Agency on Aging Contractors.

§254.15. *Appeal Procedures for Area Agency on Aging Contractors.*

(a) Definitions. Definitions for the words and terms used this section are located in section §254.1 of this title (relating to the Operation of the Texas Department on Aging).

(b) Purpose. The purpose of this section is to establish procedures for any area agency on aging contractor who is aggrieved in connection with penalties imposed by the Department, as described in §254.13 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Penalties). All notifications sent from the Department to a contractor during the proposed imposition of a penalty shall contain information informing the contractor of the right to appeal, as well as the level of appeal appropriate for the matter, as described in this section.

(c) Appeal to the Executive Director. The imposition of a level one penalty may be appealed by presenting a formal protest to the Executive Director of the Texas Department on Aging.

(1) The protest shall follow the format described in subsection (f) of this section.

(2) The contractor shall submit three copies of the protest to the Executive Director.

(3) The Executive Director shall investigate the protest and issue a written determination within 30 calendar days upon receipt of the protest. The decision of the Executive Director is final.

(d) Dispute Resolution Committee. The imposition of a level two or level three penalty may be appealed by the contractor by presenting a formal protest, as described in subsections (f)-(h) of this section, to the Dispute Resolution Committee of the Texas Department on Aging. When two Department division managers not connected with the matter cannot be identified, the Department may choose to refer the protest to a Dispute Resolution Center in Austin, Texas.

(e) Exception. In the event of the level two and level three penalties relating to the temporary withholding of funds, as described in §254.13(g)(2)(B) and (3)(C) of this title (relating to the Department's Responsibility for Imposing Sanctions), and/or relating to the disallowance of costs as described in section §260.2 (a)(3) of this title (relating to Area Agency on Aging Fiscal Responsibilities), and prior to presenting a formal protest to the Dispute Resolution Committee, a contractor may choose to request a public hearing from the Department, in accordance with the Older Americans Act, §306 (e)(1)-(3).

(f) Formal protest. A formal protest must contain:

(1) a specified identification of the statutory or regulatory provision or the contract provision that the contractor is alleged to have violated;

(2) a specific description of the violation or violations;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved; and

(5) arguments and authorities in support of the protest.



(g) Copies. In making a formal protest to the Dispute Resolution Committee, the contractor shall send five copies of the protest to the Department. Copies of the protest shall also be sent by the protesting contractor to other interested parties, i.e., subcontractors or vendors for the contract(s) involved.

(h) Settlement/Resolution. The Dispute Resolution Committee shall have the authority to settle and resolve the dispute. The committee may solicit written responses to the protest from other interested parties. If the protest/dispute is not resolved by mutual agreement during the meeting between the contractor and the Dispute Resolution Committee, the committee will issue a determination which shall be final. The committee will issue a written determination on the protest within 30 calendar days following the dispute resolution meeting.

(i) Request for a hearing before an administrative law judge. The imposition of a level four penalty may be appealed by a request from the contractor for a hearing before an administrative law judge. The request shall be in writing and must state with specificity the grounds upon which the proposed penalty is appealed and all grounds upon which the contractor refutes the basis of the proposed penalty. The request must include:

- (1) the dates of all relevant actions;
- (2) the names of individuals or organizations involved in the proposed penalty;
- (3) specific statements and documentation which disprove the findings made by the Department, and/or that the sections of the Older Americans Act, state law or any rules or regulations cited in the letter of notification have not been violated; and
- (4) A certified copy of the minutes or resolution which indicates adoption by a majority of the quorum of the contractor's governing body a request for a hearing before an administrative law judge.

(j) Conduct of a hearing before an administrative law judge. The person or persons so designated in the contract between the Department and the contractor shall act on behalf of the contractor. The proceedings and conduct of the hearing shall follow the rules promulgated in Title 1, Part VII, State Office of Administrative Hearings, chapter 155, Rules of Procedure, et seq. The hearing examiner shall issue a final decision on behalf of the Department.

(k) Time limitations. A request to appeal any level of penalties as described in this subsection must be received by the Department within 30 calendar days following the contractor's receipt of notification of proposed action by the Department.

(1) In the event that a request for an appeal is not timely, the appeal will not be considered and the protesting contractor will be notified in writing.

(2) The contractor may submit written amendments to a request for an appeal, which must be received by the Department not less than ten (10) calendar days prior to the date set for the appeal.

(l) Department responses to a request for an appeal. Upon receipt of a request for an appeal, the Department shall, within ten (10) calendar days:

(1) set a date for the appeal consideration, and/or hearing, if a hearing is applicable; and

(2) issue a written notice to the contractor by registered or certified mail, return receipt requested, which shall provide:

(A) a statement of time, date and location of the appeal consideration or hearing, if a hearing is applicable;

(B) a statement of the legal authority and jurisdiction under which the appeal is to be held;

(C) a reference to the particular sections of statutes, regulations and rules involved; and

(D) a summary of the reasons for the proposed penalty that is being appealed and the evidence on which the proposed penalty is based.

(m) Effective date of penalties. In the event of a timely appeal under this section, the Department may not make a final determination regarding its proposed penalties until a requested appeal and hearing, if applicable, has been granted.

(1) During the appeal process, the Department shall not proceed with the next levels of penalties, unless it makes the written determination that by delaying the next levels of penalties, service interruptions or poor service quality will occur, and/or that the health and safety of older people will be at risk, and/or an emergency exists.

(2) If the appeal process results in a final determination in support of the department's imposition of the penalties, the penalties will be effective upon the original date of the notification of deficiency sent by the Department to the contractor.

(n) Appeal to the Assistant Secretary on Aging, United States Department of Health and Human Services. In accordance with Section 305(b)(5)(C) of the Older Americans Act, and 45 CFR, Part 1321, a contractor may make an appeal to the Assistant Secretary, and the Department shall conduct a public hearing, when the Department has made a final determination to:

- (1) withdraw the designation of an area agency on aging;
- (2) designate an additional planning and service area; or
- (3) divide the state into different planning and services areas, or otherwise affect the boundaries of the current planning and service areas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 19, 1996.

TRD-9608808

Mary Sapp

Executive Director

Texas Department on Aging

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 444-2727

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Management

## Advisory Committees

### 43 TAC §1.85

*(Editor's Note: The Texas Department of Transportation proposed for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is in the Emergency Rules section of this issue.)*

The Texas Department of Transportation proposes an amendment to §1.85, concerning department advisory committees. An amendment to §1.85 is also being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

Transportation Code, §203.002 authorizes the commission to lay out, construct, maintain, and operate a modern state highway system. Transportation Code, Chapter 223 requires the department to submit for competitive bids each contract for the improvement of a highway that is part of the state highway system, or materials to be used in the construction or maintenance of that highway. Transportation Code, §223.007 provides that the commission shall prescribe the form of a highway improvement contract.

The department's preliminary internal assessment of the state's transportation needs for 1997-2006 has revealed that current funding levels will result in substantial deterioration of the state highway system's pavement quality, bridges, and urban mobility.

The Texas Sunset Advisory Commission's 1996 Staff Report on the department identified a funding crisis for highway system improvements that endangers the department's ability to address its responsibilities under Transportation Code, §203.002.

Texas Civil Statutes, Article 6252-33, provide that a state agency which is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency.

The Transportation Systems Efficiency Advisory Committee will provide a mechanism for the department and the commission to solicit input from the private sector in identifying innovative methods to reduce department costs in the construction and maintenance of the state highway system, thereby providing some relief to the funding crisis.

Robert W. Jackson, Deputy General Counsel, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jackson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

Mr. Jackson also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of implementing the section will be to continue to reduce highway improvement costs and extend the reach of taxpayer dollars appropriated for highway purposes.

There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Robert W. Jackson, Deputy General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 31, 1996.

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6252-33, which provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency.

The amendment does not affect other statutes, articles, or codes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608763

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630



## Access to Official Records

### 43 TAC §§1.500-1.503

*(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Transportation proposes the repeal of §§1.500-1.503, concerning access to official records. These sections are no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 3, Public Information, as new §§3.10-3.14, concerning access to official records, in an amended form.

Cassie Carlson Reed, Deputy Executive Director, Administrative Services, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeals.

Ms. Reed has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeals.

Ms. Reed also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of implementing the repeal will be an easier access to rules concerning access to official records. There will be no effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the repeals as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held 9:00 a.m. on Tuesday, July 23, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas, 78701-2483, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangement can be made.

Comments on the proposed repeals may be submitted to Cassie Carlson Reed, Deputy Executive Director, Administrative Services, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 31, 1996.

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Government Code, §552.2611, which requires each agency by rule to specify the charges the agency will make for copies of public records.

The repeal does not affect other statutes, articles, or codes.

*§1.500. Purpose and Scope.*

*§1.501. Definitions.*

*§1.502. Public Access.*

*§1.503. Cost of Copies of Official Records.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608762

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630



## Chapter 3. Public Information

### Subchapter B. Access to Official Records

#### 43 TAC §§3.10-3.14

The Texas Department of Transportation proposes new §§3.10-3.14, concerning access to official records.

Transportation Code, §201.501 authorizes the department to furnish certified copies of records. Transportation Code, §502.008 requires release of vehicle registration information to governmental agencies. Government Code, §552.2511 requires each agency by rule to specify the charges the agency will make for copies of public records.

Adoption of new §§3.10-3.14 is necessary to re-enact the subject matter with changes of §§1.500-1.503, concerning access to official records and §17.26 concerning public access to vehicle registration records which are being contemporaneously proposed for repeal.

Section 3.10 establishes the department's policy to facilitate and maximize public access to public information.

Section 3.11 defines terms applicable to this undesignated head.

Section 3.12 provides a procedure for requesting, producing, and examining records. This section also provides that if the department considers it is not required to produce the requested records, the department will ask for a decision from the attorney general as to production. The department will not provide records considered to be confidential, copies of information subject to intellectual property protection, access to social security numbers contained in the department's records. Upon receipt of a court order the department will block access to information pertaining to a specific motor vehicle record. A legislative member, agency, or committee may request confidential information if the public information requested is for legislative purposes and the department may require a confidentiality agreement. This section also establishes a list of officials who may certify records; and provides that the department will provide a written statement to the requestor if the information will require programming, the request is not feasible, or will result in substantial interference with the department's operations. If the requestor still requires the information, the department will provide it according to the cost and time parameters set out in the statement.

Section 3.13 provides a list of charges for copies and related services, personnel, and overhead; establishes a time of payment; and authorizes the department to waive or reduce fees.

Section 3.14 provides that general, travel-related, and transportation-related information will be available via the Internet. Public information requests will not be accepted via Internet. It also provides for the department to make

files of motor vehicle registration, title, and vehicle ownership information available electronically through agreements and for electronic access by other state and federal agencies.

Cassie Carlson Reed, Deputy Executive Director, Administrative Services, has determined that for the first five-year period the new sections are in effect the fiscal implications for state or local government as a result of enforcing or administering the proposed new sections will vary depending upon the quantity and type of information requested.

Ms. Reed has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed new sections.

Ms. Reed also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of implementing the new sections will be an easier access to rules concerning access to official records. There will be no effect on small businesses. Since some of the fees have increased, the anticipated economic cost to persons who are required to comply with the new sections as proposed will vary depending upon the quantity and type of information requested.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 9:00 a.m. on Tuesday, July 23, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas, 78701-2483, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangement can be made.

Comments on the proposed new sections may be submitted to Cassie Carlson Reed, Deputy Executive Director, Administrative Services, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 31, 1996.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, Government Code, §552.2611, which requires each agency by rule to specify the charges the agency will make for copies of public records, and Transportation Code, Section 502.008 requires release of vehicle registration information to governmental agencies.

The new sections do not affect other statutes, articles, or codes.

#### *§3.10. Purpose and Scope.*

It is the policy of the Texas Department of Transportation to provide the public complete information regarding the affairs of the department in a manner that will facilitate and maximize public access. In compliance with the Public Information Act, Government Code, Chapter 552, the sections under this subchapter provide policies and procedures governing public access to official department public records.

#### *§3.11. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Code - Government Code, Chapter 552.

Commission - Texas Transportation Commission.

Department - Texas Department of Transportation.

District engineer - The chief administrative officer of a district of the department.

Division director - The chief administrative officer of a division or special office of the department.

Law enforcement agency - A federal, state, county, or municipal agency involved in criminal law enforcement that receives information through the Department of Public Safety's communication network.

Manipulation - The process of modifying, reordering, or decoding of information with human intervention.

Processing - The execution of a sequence of coded instructions by a computer producing a result.

Programming - The process of producing a sequence of coded instructions that can be executed by a computer.

Political subdivision - A county, municipality, local board, or other governmental body of this state having authority to provide a public service.

Service agreement - A contractual agreement which allows individuals, businesses, or state governmental agencies or institutions to access the department's vehicle registration records.

Special district - A political subdivision of the state established to provide a single public service within a specific geographical area.

Vehicle registration record - Information contained in the department's files which reflects, but is not limited to, the make, vehicle identification number, year, model, body style, license number, and the name, address, and social security number of the registered owner.

#### *§3.12. Public Access.*

(a) Request for records.

(1) A person seeking public information shall submit a request in writing to the department. A request should be submitted to:

(A) the department's Director of Public Information; or

(B) the district engineer or division director for the district or division of the department responsible for the information.

(2) A request for official records shall include the name, address, and telephone number of the requestor, and a description of the records in sufficient detail to permit efficient gathering of the requested items.

(b) Production of records. Except as provided in subsections (d) and (e) of this section, the department will provide copies or promptly produce official department records for inspection, duplication, or both. If the requested information is unavailable for inspection at the time of the request because it is in active use or otherwise not readily available, the department will certify this fact in writing within 10 calendar days after the date the information is requested to the applicant and specify a date and hour within a reasonable time when the record will be available for inspection or duplication.

(c) Examination of information.

(1) A person requesting to examine official records in the offices of the department must complete the examination without disrupting the normal operations of the department and not later than the 10th day after the date the records are made available to the person. Upon written request, the department will extend the examination period by increments of 10 days, not to exceed a total of 30 days.

(2) The inspection of records may be interrupted by the department if the records are needed for use by the department. The period of interruption will not be charged against the requestor's 10-day period to examine the records.

(3) A person may not remove an original copy of an official department record from the offices of the department.

(d) Request for opinion. If the department considers that requested records fall within an exception under the Code, and that the records should be withheld, by the 10th calendar date after the date of receiving the written request, the department will ask for a decision from the attorney general about whether the records are within that exception if there has not been a previous determination about whether the records fall within one of the exceptions.

(e) Confidential information and privacy protection.

(1) The department will not provide records considered to be confidential by law or otherwise prohibited from release under the Code or other provisions of law, and will not provide copies of information subject to intellectual property protection.

(A) The department will not provide access to social security numbers contained in the department's records except to governmental entities that demonstrate authority to obtain the information.

(B) Upon receipt of a court order to prevent release of information, the department will prevent access to all information pertaining to an individual's specific motor vehicle record.

(2) A legislative member, agency, or committee may request confidential information if the public information requested is for legislative purposes. The department may require the requesting legislative agency or committee, or the member or employee of the requesting entity to sign a confidentiality agreement that requires the following:

(A) the information shall not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(B) the information shall be labeled confidential;

(C) the information shall be kept securely; and

(D) the number of copies of the information or the notes taken from the information that are not destroyed or returned to the department remain confidential and subject to the confidentiality agreement.

(f) Certified records. In accordance with Transportation Code, §201.501, the following officials shall serve as the executive director's authorized representatives for the purpose of certifying official department records.

(1) The Department's chief minute clerk may certify commission minute orders. In his or her absence, minute orders may be certified by the executive assistant to the executive director. The executive director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(2) Other official records of the department may be certified by the district engineer, division director, or other department officials having official custody of the records. A district engineer or division director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(g) Programming and manipulation of data.

(1) If responding to a request for information will require programming or manipulation of data and compliance with the request is not feasible or will result in substantial interference with the department's ongoing operations, or the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, then the department will provide a written statement within 20 days after the date of the receipt of the request. The statement will include:

(A) the information is not available in the requested form;

(B) a description of the form in which the information is available;

(C) a description of any contract or services that would be required to provide the information in the requested form;

(D) a statement of the estimated cost of providing the information; and

(E) a statement of the anticipated time required to provide the information.

(2) If the department gives written notice within 20 days after the date of receipt of the request to the person making the request that additional time is needed, the department may have an additional 10 days to issue the statement in paragraph (1) of this subsection.

(3) The department will not provide the information until the person making the request states in writing that he or she:

(A) wants the department to provide the information according to the cost and time parameters set out in the statement; or

(B) wants the information in the form in which it is available.

### *§3.13. Cost of Copies of Official Records.*

(a) Standard costs. The following table lists charges for copies and related services.

Figure: 43 TAC §3.13(a)

Division manuals and subscription services: (Also available on an annual fee basis are subscription services to furnish administrative documents pertaining to appraisal work and utility adjustment work performed for and by the department). Charges based on cost of printing.

(b) Personnel and overhead charge. A personnel charge of \$15 per hour plus an overhead charge of 20% of the personnel charge will be added to the costs of any request involving the:

(1) copying of more than 50 pages; or

(2) retrieval and copying time of more than one hour.

(c) Document inspection. If editing of confidential information is required in order to obtain access to a record for inspection, the department may charge for the cost of making copies to edit.

(d) Payment.

(1) Payment of charges is due prior to release of copies of records.

(2) Upon release of copies of records, the department will furnish to the requestor a statement describing all charges.

(e) Waiver.

(1) The department will provide free of charge copies of records relating to an employee grievance proceeding under Chapter 2, §9.2 of the department's Human Resources Manual to an official party to the proceeding.

(2) The department may waive or reduce the fees charged under subsections (a) and (b) of this section if the executive director or his or her designee determines waiver to be in the public interest because furnishing the records primarily benefits the general public.

### *§3.14. Electronic Access to Department Records.*

(a) Electronic on-line delivery systems. The department will provide certain information via the Internet through a departmental World Wide Web Site (<http://www.dot.state.tx.us>). Information concerning doing business with the department, news about the department, tourism and travel information, public transportation information, and other transportation-related information will be provided through this web site. Public information requests or other requests will not be accepted via Internet.

(b) Electronic access to vehicle title and registration information.

(1) The department maintains files of motor vehicle registration, title, and vehicle ownership information and will make such information available electronically as required by Transportation Code, §502.008.

(2) The department may provide information contained in vehicle registration and title records to an individual or business under the terms of a written service agreement for each electronic access terminal.

(3) The written service agreement must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account;

(C) notification regarding the monthly base charge of \$23, plus \$0.12 per vehicle inquiry;

(D) the notice of termination due to delinquent account;

(E) the notification of change in ownership status of the contractor;

(F) service hours for access to motor vehicle records;

(G) the contractor signature and employer identification number; and

(H) a statement that the use of registration information obtained by virtue of a service agreement is conditional upon being used only for the purposes defined in the agreement

(c) Electronic access by other governmental agencies. The department will provide electronic access to its records for use by other governmental agencies under the terms of a written agreement and payment of the fees indicated in §3.13 of this title (relating to Cost of Copies of Official Records). Law enforcement agencies are exempt from these fees. A request for social security number information must be accompanied by a statement citing the requestor's authority to obtain such information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608761

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630

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## **Chapter 17. Vehicle Titles and Registration**

### **Subchapter A. Motor Vehicle Certificates of Title**

#### **43 TAC §17.8**

The Texas Department of Transportation proposes an amendment to §17.8, concerning certificates of title for salvage vehicles. The amended section is necessary to ensure the department's proper administration of the laws concerning the issuance of salvage vehicle certificates of title.

Texas Civil Statutes, Article 6687-1, §37A, require the department to develop and implement policies regarding the issuance of motor vehicle certificates of title for salvage and nonrepairable motor vehicles.

Amended §17.8 is revised to provide an exemption from the inspection by the Department of Public Safety for vehicles for which the evidence of ownership is a Texas Salvage Certificate or Salvage Certificate of Title issued by another state or jurisdiction prior to March 1, 1996. The amendments also clarify which supporting documents are required with an application for certificate of title for a rebuilt salvage vehicle when the evidence of motor vehicle ownership is a Salvage Certificate or Salvage Certificate of Title issued by another state or jurisdiction on or after March 1, 1996.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Dike has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

Mr. Dike also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of implementing the section will be to clarify evidence of ownership required with an application on a rebuilt salvage vehicle.

There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Pursuant to Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amended sections. The public hearing will be held at 9:00 a.m. on July 15, 1996, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing. However, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588, at

least two working days prior to the meeting so that appropriate arrangements can be made.

Comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 31, 1996.

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1a, which authorize the department to adopt rules to administer the licensing of salvage vehicle dealers and agents.

No statutes, articles, or codes are affected by the proposed amendment.

*§17.8. Certificates of Title for Salvage Vehicles.*

(a) Certificate of title applications for salvage vehicles.

(1)-(2) (No change.)

(3) Accompanying documentation.

(A) (No change.)

(B) The application for certificate of title for a transaction involving a rebuilt salvage shall be supported by, at a minimum, the following documents:

(i) evidence of vehicle ownership, as described in subsection (b) [(c)](2) of this section;

(ii)-(v) (No change.)

(vi) a written statement signed by a specially trained commissioned officer of the Texas Department of Public Safety certifying to the department that the vehicle identification numbers and parts identification numbers are accurate, the applicant has proof that the applicant owns the parts used to repair the vehicle, the vehicle may be safely operated, and the vehicle complies with all applicable motor vehicle safety standards of this state (**Texas Salvage Certificates or Salvage Certificates or Salvage Certificates of Title issued by another state or jurisdiction prior to March 1, 1996, are exempt from this requirement**).

(b) Evidence of salvage motor vehicle ownership.

(1) (No change.)

(2) Evidence of motor vehicle ownership on a rebuilt salvage properly assigned to the applicant shall accompany the certificate of title application involving the transaction. Evidence shall include the following documents:

[(A) a Texas Salvage Certificate ;]

(A) [(B)] a Texas Salvage Motor Vehicle Certificate of Title;

(B) [(C)] a Texas Nonrepairable **Motor** [motor] Vehicle Certificate of Title; or

(C) [(D)] a comparable **Salvage Certificate or Salvage Certificate of Title** [ownership document] issued **on or after March 1, 1996**, by another state or jurisdiction.

(c)-(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608760

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630



## Subchapter B. Motor Vehicle Registration

### 43 TAC §17.26

*(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Transportation proposes the repeal of §17.26, concerning public access to vehicle registration records. This section is no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 3, Public Information, as new §§3.10-3.14, concerning access to official records, in an amended form.

Cassie Carlson Reed, Deputy Executive Director, Administrative Services, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Ms. Reed has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeal.

Ms. Reed also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of implementing the repeal will be an easier access to rules concerning access to official records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9:00 a.m. on Tuesday, July 23, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity

to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangement can be made.

Comments on the proposed repeal may be submitted to Cassie Carlson Reed, Deputy Executive Director, Administrative Services, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 31, 1996.

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, Government Code, §552.2611, which requires each agency by rule to specify the charges the agency will make for copies of public records, and Transportation Code, §502.008, which requires release of vehicle registration information to governmental agencies.

The repeal does not affect other statutes, articles, or codes.

*§17.26. Public Access to Vehicle Registration Records.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608759

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630



## Subchapter D. Salvage Vehicles Dealers

### 43 TAC §§17.60-17.64

The Texas Department of Transportation proposes amendments to §§17.60-17.64, concerning salvage vehicle dealers' and agents' licenses.

Texas Civil Statutes, Article 6687-1a, authorizes the department to issue licenses to salvage vehicle dealers and agents.

Sections 17.60 and 17.61 are revised to provide for the change of this undesignated head to a subchapter.



Section 17.62 is amended to require an affidavit that states that the applicant has not been convicted of a felony or that it has been at least three years since the applicant's termination of the sentence, parole, mandatory supervision, or probation for a felony conviction on the applications for salvage vehicle dealer and agent licenses.

Section 17.63 is amended to clarify that a salvage vehicle dealer operating at more than one location in a county may not authorize more than five salvage dealer agents per license, rather than per business location. The amendments require notification to the department of any change of ownership status and the termination of an agent operating under a salvage vehicle dealer license. This section also allows off-site sales at any licensed salvage vehicle dealer business location.

Section 17.64 is amended to allow for denial of a salvage vehicle dealer or agent license, if the applicant has been convicted of a felony, and if it has not been at least three years since an applicant's termination of the sentence, parole, mandatory supervision, or probation for a felony conviction. This section provides for suspension or revocation of a salvage vehicle dealer's license, if the dealer fails to notify the department of the termination of an agent operating under such dealer's license within 10 days of the date of termination.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Dike has certified that there will be a positive impact on local economies and overall employment because the amendments will allow off-site sales at any licensed salvage vehicle dealer business location and an increased number of persons will be eligible to apply for a salvage vehicle dealer license.

Mr. Dike also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of implementing the section will be to eliminate undue burdens on the industry.

There may be an effect on small businesses and an anticipated economic cost to persons who are required to comply with the amendments as proposed because the amendments will increase the number of persons eligible for a license and the department cannot estimate the start up cost for office furniture and equipment, office space, signs, or the cost associated with adding any necessary office furniture, equipment, or signs to existing salvage business facilities. The fees associated with each initial application for a salvage dealer or agent license are approximately \$95 for each of the initial license and approximately \$95 for annual renewal.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m. on July 15, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30

a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangements can be made.

Comments on the proposal may be submitted to Mr. Jerry L. Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on July 15, 1996.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1a, which authorizes the department to adopt rules to administer the licensing of salvage vehicle dealers and agents.

No statutes, articles, or codes are affected by these proposed amendments.

*§17.60. Purpose and Scope.*

Texas Civil Statutes, Article 6687-1a, provides that a person may not act as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including storing or displaying vehicles as an agent or escrow agent of an insurance company, unless the department issues that person a salvage vehicle dealer or agent license. This **subchapter** [undesignated head] describes procedures by which a person may obtain a license to act as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer; conditions under which a licensee must operate the facility; and the procedures by which the department will enforce this **subchapter** [undesignated head].

*§17.61. Definitions.*

The following words and terms, when used in this **subchapter** [undesignated head], shall have the following meanings, unless the context clearly indicates otherwise.

*§17.62. Salvage Vehicle Dealer and Agent Licenses.*

(a) Applicability. A person who acts as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including a person who stores or displays vehicles as an agent or escrow agent of an insurance company, must obtain a salvage vehicle dealer or an agent license in accordance with Texas Civil Statutes, Article 6687-1a, and the provisions of this **subchapter** [undesignated head].

(b) Exemptions. The provisions of this **subchapter** [undesignated head] do not apply to:

(1)-(9) (No change.)

(10) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding a provision of Texas Civil Statutes, Article 6687-1a, and this **subchapter** [undesignated head]; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a salvage dealer's license, the auction may be conducted only at a location for which a salvage dealer's license has been issued to that person or at a location approved by the department as provided by this section.

(c) (No change.)

(d) Application for salvage vehicle dealer or agent license.

(1) Application for salvage vehicle dealer license. An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department. An applicant who will operate as a salvage vehicle dealer under a name other than the name of that applicant shall use the name under which that applicant is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application form using the letters "DBA."

(A) Form of application. The application form must be signed by the applicant, be accompanied by the application fee of \$95, and include:

(i)-(iv) (No change.)

(v) an affidavit containing a statement that the applicant has never been convicted of a felony **or that it has been at least three years since the applicant's termination of the sentence, parole, mandatory supervision, or probation for a felony conviction** [and];

(vi) **three business association references;**

(vii) [(vi)] the applicant's federal tax identification number, if any;

(viii) [(vii)] the applicant's state sales tax number;

(ix) [(viii)] the applicant's social security number, if the applicant is an individual; and

(x) [(ix)] the classification(s) of license(s) for which the form is being submitted.

(B) (No change.)

(2) Application for salvage vehicle agent license. An applicant, who is authorized to operate as an agent for a salvage vehicle dealer must apply on a form prescribed by the department. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A)-(E) (No change.)

(F) an affidavit containing a statement that the applicant has never been convicted of a felony **or that it has been at least three years since the applicant's termination of the sentence, parole, mandatory supervision, or probation for a felony conviction** [and];

(G) **three business association references;**

(H) [(G)] the applicant's federal tax identification number, if any;

(I) [(H)] the applicant's state sales tax number; and

(J) [(I)] the applicant's social security number.

(3) Application for corporate salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the applicant must apply on a form prescribed by the department.

(A) Form of application. The form must indicate the name of the corporation, as it appears on file with the secretary of state, be signed by the applicant, be accompanied by the application fee, and include:

(i)-(v) (No change.)

(vi) an affidavit containing a statement that each officer and director has never been convicted of a felony **or that it has been at least three years since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of each officer and director** [and];

(vii) three business association references;

(viii) [(vii)] the applicant's federal tax identification number, if any;

(ix) [(viii)] the applicant's state sales tax number;

(x) [(ix)] the name, address, date of birth, and social security number of each of the principal officers and directors of the corporation;

(xi) [(x)] the classification(s) of license(s) for which the form is being submitted.

(B) (No change.)

(4) Partnerships. If the license applicant intends to engage in business through a partnership, the applicant must apply on a form prescribed by the department. The form must be signed by the applicant, be accompanied by the application fee, and include:

(A)-(D) (No change.)

(E) an affidavit containing a statement that each owner or partner has never been convicted of a felony **or it has been at least three years since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of each owner or partner** [and];

(F) **three business association references;**

(G) [(F)] the partnership's federal tax identification number, if any;

(H) [(G)] the partnership's state sales tax number;

(I) [(H)] the name, address, date of birth, and social security number of each owner and partner;

(J) [(I)] the classification(s) of license(s) for which such form is being submitted.

(e)-(l) (No change.)

§17.63. *Place of Business.*

(a) Registration of business locations.

(1) A license applicant who intends to operate as a salvage vehicle dealer at more than one location within a county must:

(A)-(B) (No change.)

(C) not **authorize** [employ] more than five salvage dealer agents **per salvage vehicle dealer license** [at all locations].

(2)-(4) (No change.)

(b) Change of licensee's status.

(1) (No change.)

(2) Change of ownership. A salvage vehicle dealer shall notify the department in writing within 10 days if there is **any** [a] change of ownership. Upon notification of a complete change of ownership, the department shall cancel the existing salvage vehicle dealer license. The new owner must qualify for a new salvage vehicle dealer license by submission of a completed application for Texas salvage vehicle dealer or agent to the department.

(3) (No change.)

(4) **Termination of agent. A salvage vehicle dealer shall notify the department in writing within 10 days of the termination of an agent who was authorized to operate under the salvage vehicle dealer's license.**

(c) Off-site sales. A salvage vehicle dealer or agent is not permitted to sell or offer for sale salvage or nonrepairable vehicles or salvage vehicle parts from **any** [a] location other than **a** [the] licensed salvage vehicle dealer's business **location** [address], which has been approved by the department.

*§17.64. Denial, Suspension, or Revocation.*

(a) Denial of salvage vehicle dealer or agent license. The department shall deny issuance of a salvage vehicle dealer or agent license if:

(1) (No change.)

(2) the affidavit and business references required by §17.62 of this title (relating to Salvage Vehicle Dealer and Agent Licenses) are inadequate; [or]

(3) **the applicant has been convicted of a felony for which less than three years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation; or**

(4) [(3)] the applicant's previous salvage vehicle dealer or agent license was revoked and the first anniversary of the date of revocation has not occurred.

(b) Suspension or revocation. The department may suspend or revoke a salvage vehicle dealer or agent license if the dealer or agent:

(1)-(5) (No change.)

(6) **fails to notify the department of the termination of an agent who was authorized to operate under the salvage vehicle dealer's license within ten days after such termination;**

(7) [(6)] fails to follow the restriction of the sale, transfer, or release of a late model salvage or nonrepairable motor vehicle as provided in §17.62(k) of this title (relating to Authorized Sale);

(8) [(7)] fails to meet the time frames and requirements provided in §17.63 of this title (relating to Place of Business);

(9) [(8)] fails to remain regularly and actively engaged in the business for which such salvage vehicle dealer or agent license is issued;

(10) [(9)] sells more than one new or late model salvage or nonrepairable motor vehicle to the same person in a casual sale during a calendar year;

(11) [(10)] uses or allows use of the dealer's or agent's license or location for the purpose of avoiding the provisions of the salvage vehicle dealer law;

(12) [(11)] sells or offers for sale salvage or nonrepairable vehicles or salvage vehicle parts from a location other than the licensed salvage vehicle dealer's business address, which has been approved by the department;

(13) **is convicted of a felony after initial issuance or renewal of the salvage vehicle dealer or agent license or less than three years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of the applicant;**

(14) [(12)] makes a material misrepresentation in any application or other information filed with the department;

(15) [(13)] fails to remit payment for civil penalties assessed by the department; or

(16) [(14)] violates any of the provisions of Transportation Code, Chapter 501, or any provisions of this **subchapter** [undesignated head].

(c) (No change.)

(d) Proceedings relating to the denial, suspension, or revocation of a salvage dealer's or agent's license.

(1) Upon determination that a dealer or agent license should be denied, suspended, or revoked, the director will mail a notice of the denial, suspension, or revocation to the last known address of the dealer or agent by certified mail.

(A) The notice shall clearly state:

(i)-(iii) (No change.)

(iv) that the notice of suspension or revocation shall also apply to licensed salvage vehicle dealer agents **authorized** [employed] by such dealer.

(B) (No change.)

(2) (No change.)

(e)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608758

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630

## Chapter 21. Right of Way

### Control of Outdoor Advertising Signs

#### 43 TAC §§21.142, 21.146, 21.150

*(Editor's Note: The Texas Department of Transportation proposed for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is in the Emergency Rules section of this issue.)*

The Texas Department of Transportation proposes amendments to §§21.142, 21.146, and 21.150, concerning definitions, signs controlled, and permits, respectively, which relate to control of outdoor advertising signs.

The National Highway System Designation Act of 1995 amended Title 23, United States Code, §101 to provide for the designation of the national highway system and for other purposes.

Title 23, United States Code, §131 requires the states to control outdoor advertising along the interstate and primary systems. Section 131(t) defines the primary system for purposes of the Federal Highway Beautification Act as the primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the national highway system.

Transportation Code, Chapter 391, previously codified at Texas Civil Statutes, Article 4477-9a (the "Highway Beautification Act"), provides the department with authority to control outdoor signs on the interstate or primary system of highways.

The amendment to §21.142 modifies the definition of federal-aid primary highway to include those highways on the National Highway System as defined under Title 23, United States Code, §103(b) and those highways on the primary system as of June 1, 1991. The amendment also adds a definition for National Highway System.

The amendment to §21.146 allows the department to permit legally erected signs along highways which were not previously subject to the department's jurisdiction under the State Highway Beautification Act but which were later added to the interstate or primary system.

The amendment to §21.150 allows the department to convert a sign registration or permit issued under §21.431 or §21.441 of this title (relating to Control of Signs Along Rural Roads) to a permit for a sign under the State Highway Beautification Act. The holder of a converted permit will not be required to pay an initial permit fee; however, the holder will be required to pay annual renewal fees.

Gary Bernethy, P.E., Director, Right of Way Division, has determined that there will be fiscal implications as result of enforcing or administering the sections. The effect on state government for each year of the first five-year period the sections will be in effect will be an estimated increase in cost of \$104,000 due to the additional highways and streets which will be added to primary system. The department's district offices will be required to complete accurate inventories, permit signs which are not currently controlled, convert existing rural road permits, and require the removal of signs which cannot be

permitted. These costs will be partially offset by license and permit fees.

Mr. Bernethy has determined there should be no fiscal implications for local governments, except that local governments which have certified that they will enforce a comprehensive sign ordinance and control advertising in lieu of state control, may find it necessary to modify their existing controls along the added highways in order to meet the federal requirements.

Mr. Bernethy has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Bernethy has also determined that the public benefit anticipated as a result of implementing the amendments will be to promote the health, safety, welfare, convenience, and enjoyment of the traveling public along the national highway system and to protect the public investment in the national highway system.

There will be an effect on small businesses that have signs. The economic cost to businesses and persons who are required to comply with the amendments as proposed will be \$125 for a license, \$60 to renew that license each year, and approximately \$50 per year for a bond whether or not the business or person already has a rural road permit. The permit renewal fee will increase for those who hold a rural road registration from \$10 per year to \$40 per year. In addition, if the business or person does not already have a permit, the department will charge an initial permit fee of \$96 and a \$40 renewal fee. If the permittee already has a rural road permit and an outdoor advertiser's license, there will be no incremental increase in fees.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m. on Thursday, July 18, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas, 78701-2483,

(512) 463-8588 at least two working days prior to the meeting so that appropriate arrangement can be made.

Comments on the proposed amendments may be submitted to Gary Bernethy, P.E., Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 31, 1996.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Transportation Code, §391.065, which authorizes the commission to adopt rules to regulate the erection and maintenance of outdoor advertising signs along the interstate and primary system of highways.

The amendments do not affect other statutes, articles, or codes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608757

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630



## Chapter 25. Traffic Operations

### City Pride Sign Program

#### 43 TAC §§25.420-25.425

The Texas Department of Transportation proposes new §§25.420-25.425, concerning the city pride sign program. These new sections prescribe the policies and procedures for the program which will allow municipalities to erect and display signs concerning points of interest or geographical, recreational, cultural, or civic information at the city limits on state highway right of way.

Section 25.420 outlines the purpose of the program.

Section 25.421 provides definitions of the words and terms included in the proposed sections.

Section 25.422 provides a procedure for a municipality to apply for participation in the city pride sign program, establishes conditions under which the department will approve the application, and provides for the form and content of the written agreement between the municipality and the department. This section requires a municipality to cooperate with contractors working on state right of way, provides installation requirements for the signs, requires that the municipality maintain the sign, and allows the department to require that a sign be removed or relocated. This section also restricts municipalities from charging fees for local participation in the program.

Section 25.423 defines the eligibility requirements for local civic organizations to participate in the sign program.

Section 25.424 establishes the design, content, and placement requirements of a city pride sign and its attachment signs. This section also restricts municipalities from removing existing regulatory, warning, destination, guide, recreational, and cultural interest signs on state highway right of way. The section provides that existing signs may be relocated at municipal expense with prior written approval from the department. This section provides that a municipality shall remove or relocate existing, non-complying civic organization or attachment signs. Beginning on September 1, 1997, the department will remove a sign that is not in compliance with this section.

New Section 25.425 provides that a civic organization must apply to the municipality, that the municipality is responsible for selection, and prescribes a procedure for removal of civic organization attachment signs.

David T. Newbern, P.E., Director of Traffic Operations, has determined that for each year of the first five-year period these new sections are in effect there will be no fiscal implications to state government as a result of enforcing or administering the new sections. If a local government chooses to participate in the program there will be a cost for construction of the sign which will range from \$200 to \$2,000 per sign depending on the size of the sign.

Mr. Newbern certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Newbern has also determined for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that roadways on the state highway system are operated as safely as possible by requiring that all signs displaying local information be placed so that they do not create a hazardous condition for the traveling public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed adoption. A public hearing will be held at 2:00 p.m. on July 18, 1996 in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:30 p.m. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to

do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Comments on the proposed new sections may be submitted to David T. Newbern, P.E., Director of Traffic Operations, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments is July 31, 1996.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation, and more specifically under Transportation Code, Section 203.002, which authorizes the commission to lay out, construct, maintain, and operate a modern state highway system.

No other statute, code, or article is affected by these new sections.

*§25.420. Purpose.*

The sections under this undesignated head prescribe the policies and procedures for the implementation of the city pride sign program which will allow municipalities to erect and display signs concerning points of interest or geographical, recreational, cultural, or civic information at the city limits on state highway right of way.

*§25.421. Definitions.*

The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Attachment sign - A sign, provided by a civic organization, that displays points of interest or geographical, recreational, cultural, or civic information.

City pride sign - A sign placed at a city's jurisdictional limits that displays attachment signs.

Civic organization - A nonprofit organization.

Department - The Texas Department of Transportation.

District - One of the 25 geographical areas managed by a district engineer, in which the department conducts its primary work activities.

Eligible highway - A non-controlled access highway on the state highway system.

Municipality - A city, town, or a self-governing unincorporated community.

Non-controlled access highway - In accordance with applicable state law, a state highway on which owners, or occupants of abutting lands, and other persons have access to or from the highway other than at such points determined by the department.

Nonprofit organization - A non-profit unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Texas Civil Statutes, Articles 1396-1.01 et seq).

Texas MUTCD - Texas Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, issued by the Texas Department of Transportation.

*§25.422. City Pride Sign Program.*

(a) Municipality application.

(1) A municipality may obtain an application for participation in the city pride sign program from the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483, or a district office.

(2) An application must be submitted to the Traffic Operations Division or a district office.

(b) Department approval.

(1) The district engineer or his or her designee will approve the design and location of the city pride sign if the plans meet department specifications in accordance with §25.424 of this title (relating to Specifications for Signs).

(2) The department will notify a municipality in writing whether its specifications have met the department's criteria. Deficiencies will be noted in the returned application.

(3) A municipality may resubmit its application when the noted deficiencies have been corrected.

(c) Written agreement. If the district engineer or his or her designee approves the sign, the municipality must enter into a written agreement with the department. The participation agreement shall be in a form prescribed by the department and shall, at a minimum, contain the requirements of this undesignated head.

(d) Cooperation with contractors. While installing or maintaining the sign, the municipality is required to cooperate with any department contractor working on the state highway system at that location.

(e) Installation.

(1) The municipality or its contractor may install the city pride sign. The department will inspect installation to ensure that the sign meets department and Texas MUTCD standards.

(2) The municipality shall submit as-built plans to the department within 45 calendar days upon completion of the installation of a city pride sign.

(f) Maintenance. The municipality shall maintain the city pride signs in a safe manner and condition in accordance with department standards.

(g) Sign relocation or removal.

(1) If the department determines that additional regulatory, warning, or guide signing is needed, it may require the municipality to remove or relocate an existing or planned city pride sign at the expense of the municipality. If the department determines that construction or maintenance activities within the state highway right of way will create conditions where an existing city pride sign will not be in compliance with the provisions of this undesignated head, the municipality shall remove the city pride sign at its expense.

(2) The municipality shall remove a city pride sign if it has not provided a replacement sign within 60 calendar days of written notification from the department that the sign is missing, damaged, broken, faded, or has become a hazard due to failure to

build to specifications, inclement weather, inadequate maintenance, accidental damage, or other cause.

(3) A sign not removed in compliance with paragraph (2) of this subsection is subject to removal by the department and the municipality is liable for removal and disposal costs as provided by §25.10 of this title (relating to Signs on State Highway Right of Way).

(h) Fees. The department and the municipality shall not require fees for participation in the city pride sign program.

(i) Termination. The department may terminate the agreement upon default of the municipality.

**§25.423. Civic Organization Eligibility.**

(a) General requirements for eligibility. A civic organization's application must be approved by the municipality. To be eligible to have an attachment sign placed on a city pride sign in accordance with §25.422 of this title (relating to City Pride Sign Program), a civic organization must:

(1) be located within or have a member who resides in the municipality; and

(2) comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin.

(b) Placement.

(1) The attachment sign shall be placed within the available sign space.

(2) An organization may have only one attachment sign unless no other organization requests the available space.

**§25.424. Specifications for Signs.**

(a) City pride sign.

(1) Design. A city pride sign:

(A) shall be fabricated in conformance with department standard plan sheet CPS (CITY PRIDE SIGN);

(B) may contain a message no greater than eight inches in height identifying the municipality;

(C) shall meet the applicable provisions of the Texas MUTCD;

(D) shall have background material which conforms with department specifications for reflective sheeting;

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and

(F) have attachment signs spaced for a balanced appearance.

(2) Content. A city pride sign shall not contain:

(A) advertising or words that may be construed as advertising, including, but not limited to, the offering of products and services;

(B) notification of municipal ordinances or regulations;

(C) attachments to the city pride sign that extend beyond the sign borders; or

(D) attachments to the supports of the city pride signs, including banners and flags.

(3) Placement. Subject to approval of the department, a city pride sign shall be installed or placed:

(A) between 300 feet and 800 feet of the city limits;

(B) to take advantage of natural terrain;

(C) to have the least impact on the scenic environment;

(D) to avoid visual conflict with other signs within the state highway right of way;

(E) with a lateral offset greater than existing guide signs;

(F) without blocking motorists' visibility of existing traffic control and guide signs; and

(G) in locations other than hanging above the road.

(4) Lighting. A sign approved for placement under paragraph (3) of this subsection may not display lighting.

(5) Existing signs.

(A) A municipality may not remove existing regulatory, warning, destination, guide, recreation, and cultural interest signs; provided, however, existing signs may be relocated with written permission of the department at the expense and responsibility of the municipality to the extent necessary to accommodate city pride signs.

(B) A municipality shall remove existing civic organization or attachment signs from department right of way and relocate these signs to a city pride sign approved in accordance with §25.422 of this title (relating to City Pride Sign Program). Beginning on September 1, 1997, the department will remove a sign that is not in compliance with this undesignated head in accordance with §25.10 of this title (relating to Signs on State Highway Right of Way).

(b) Attachment signs.

(1) Design.

(A) An attachment sign shall not exceed 48 inches in width or 36 inches in height.

(B) An attachment sign may be any color or combination of colors.

(2) Content.

(A) An attachment sign may not:

(i) consist of text, symbols, trademarks or a legend message identifying the name or abbreviation of a commercial establishment, service, or product; or

(ii) contain supplemental address or directional information, such as meeting dates or locations.

(B) An attachment sign may contain a message, symbol, or trademark only if the message, symbol, or trademark does not resemble an official traffic control device.

**§25.425. Program Operation.**

(a) Civic organization application. A civic organization shall apply to the municipality.

(b) Civic organization selection. The municipality will be responsible for selecting the civic organizations and placing the attachment signs.

(c) Removal of civic organization attachment sign.

(1) The municipality shall contact the civic organization in writing if the civic organization does not meet the requirements of §25.423 of this title (relating to Civic Organization Eligibility), or if the attachment sign is missing, damaged, broken, or faded.

(2) The civic organization has 30 calendar days after written notification to meet the requirements of §25.423 of this title (relating to Civic Organization Eligibility). The civic organization has 60 calendar days after written notification to replace a missing, damaged, broken, or faded attachment sign.

(3) The municipality shall remove an attachment sign of a participating civic organization if the civic organization:

(A) ceases to exist;

(B) does not meet the requirements of this undesignated head, and all corrections are not made within the time limits set in the written notification; or

(C) has not provided a replacement attachment sign within 60 calendar days of written notification that the attachment

sign is missing, damaged, broken, or faded or has become a hazard due to failure to build to specifications, inclement weather, inadequate maintenance, accidental damage, or other cause.

(4) A sign not removed in compliance with paragraph (3) of this subsection is subject to removal by the department and the applicant is liable for removal and disposal costs as provided by §25.10 of this title (relating to Signs on State Highway Right of Way).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608756

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-8630

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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## **TITLE 16. ECONOMIC REGULATION**

### **Part VIII. Texas Racing Commission**

#### **Chapter 309. Operation of Racetracks**

##### **Subchapter A. General Provisions**

##### **Facilities and Equipment**

##### **16 TAC §309.27**

The Texas Racing Commission has withdrawn from consideration for permanent adoption the proposed amended §309.27, which appeared in the April 16, 1996, issue of the *Texas Register* (21 TexReg 3302).

Issued in Austin, Texas, on June 17, 1996.

TRD-9608662

Paula Cochran Carter

General Counsel

Texas Racing Commission

Effective date: June 17, 1996

For further information, please call: (512) 833-6699



## **TITLE 28. INSURANCE**

### **Part I. Texas Department of Insurance**

#### **Chapter 5. Property and Casualty Insurance**

##### **28 TAC §5.10016**

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the proposed new §5.10016, which appeared in the May 3, 1996, issue of the *Texas Register* (21 TexReg 3778).

Issued in Austin, Texas, on June 18, 1996.

TRD-9608790

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 1, 1996

For further information, please call: (512) 463-6327



## **TITLE 34. PUBLIC FINANCE**

### **Part IV. Employees Retirement System of Texas**

#### **Chapter 81. Insurance**

##### **34 TAC §§81.1, 81.7, 81.11**

The Texas Department of Transportation has withdrawn from consideration for permanent adoption the proposed amendments §§81.1, 81.7, and 81.11, which appeared in the May 24, 1996, issue of the *Texas Register* (21 TexReg 4520).

Issued in Austin, Texas, on June 17, 1996.

TRD-9608611

Charles D. Travis

Executive Director

Employees Retirement System of Texas

Effective date: June 17, 1996

For further information, please call: (512) 867-3336



## **TITLE 43. TRANSPORTATION**

### **Part I. Texas Department of Transportation**

#### **Chapter 9. Contract Management**

##### **Subchapter A. General**

##### **43 TAC §9.6, §9.8**

The Texas Department of Transportation has withdrawn from consideration for permanent adoption the proposed new §9.6, and §9.8, which appeared in the January 2, 1996, issue of the *Texas Register* (21 TexReg 32).

Issued in Austin, Texas, on June 19, 1996.

TRD-9608754

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: June 18, 1996

For further information, please call: (512) 463-8630

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## Subchapter B. Highway Improvement Contracts

### 43 TAC §9.21

The Texas Department of Transportation has withdrawn from consideration for permanent adoption the proposed new §9.21, which appeared in the January 2, 1996, issue of the *Texas Register* (21 TexReg 33).

Issued in Austin, Texas, on June 19, 1996.

TRD-9608753

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: June 18, 1996

For further information, please call: (512) 463-8630

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## Subchapter C. Contracting for Architectural and Engineering

### 43 TAC §9.40

The Texas Department of Transportation has withdrawn from consideration for permanent adoption the proposed amended §9.40, which appeared in the January 2, 1996, issue of the *Texas Register* (21 TexReg 34).

Issued in Austin, Texas, on June 19, 1996.

TRD-9608752

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: June 18, 1996

For further information, please call: (512) 463-8630

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## Subchapter D. Business Opportunity Programs

### 43 TAC §9.50-9.61

The Texas Department of Transportation has withdrawn from consideration for permanent adoption the proposed amended §9.50-9.61, which appeared in the January 2, 1996, issue of the *Texas Register* (21 TexReg 34).

Issued in Austin, Texas, on June 19, 1996.

TRD-9608755

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: June 18, 1996

For further information, please call: (512) 463-8630

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# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## **TITLE 1. ADMINISTRATION**

### **Part II. Texas Ethics Commission**

#### **Chapter 22. Restrictions on Contributions and Expenditures**

##### **1 TAC §22.32**

The Texas Ethics Commission adopts new §22.32, concerning the retirement of campaign debt by certain judicial candidates and officeholders who are not running in the 1996 election and by their political committees. §22.32 is adopted without changes to the proposed text as published in the May 7, 1996, issue of the *Texas Register* (21 TexReg 3877).

This section provides guidelines for those judicial candidates, officeholders, and political committees that qualify and that wish to accept political contributions to retire campaign debt incurred before June 16, 1995. It also prescribes procedures that must be followed by those judicial candidates, officeholders, and political committees before accepting political contributions under this section. The section authorizes a judicial candidate or officeholder who is not running for election in 1996, or a specific-purpose committee for supporting or opposing such a candidate or officeholder, to accept political contributions during the period beginning June 16, 1995, and continuing through March 5, 1997, to retire campaign debt incurred before June 16, 1995. Political contributions may not be accepted in excess of the amount necessary to retire existing campaign debt and to cover costs incurred in soliciting political contributions to retire that debt. To be entitled to act under the section, a sworn statement must be filed with the authority with whom the person's campaign treasurer appointment is filed.

The Texas Ethics Commission received written comments from 49 persons concerning the rule. All comments urged the commission to adopt the rule as proposed.

This rule is adopted under the Government Code, Chapter 571, §571.062, which authorizes the Texas Ethics Commission to adopt rules to implement laws administered and enforced by the commission; under §10(d), Chapter 763, Acts of the 74th Legislature, Regular Session, 1995 (relating to the effective date and application of Subchapter F, Chapter 253, Election Code); and under Election Code §253.035(h) (relating to Restrictions on Personal Use of Contributions), §253.151 (relating to Applicability of Subchapter), §253.153 (relating to Con-

tribution Prohibited Except During Election Period), §253.155 (relating to Contribution Limits), §253.156 (relating to Contribution to Certain Committees Considered Contribution to Candidate), §253.157 (relating to Limit on Contribution by Member or General-Purpose Committee of Law Firm), §253.158 (relating to Contribution by Spouse or Child Considered to be Contribution by Individual), §253.159 (relating to Exception to Contribution Limits), §253.160 (relating to Aggregate Limit on Contributions From and Direct Campaign Expenditures by General-Purpose Committee), and §253.162 (relating to Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608666

Tom Harrison

Executive Director

Texas Ethics Commission

Effective date: July 8, 1996

Proposal publication date: May 7, 1996

For further information, please call: (512) 463-5800

## **TITLE 13. CULTURAL RESOURCES**

### **Part II. Texas Historical Commission**

#### **Chapter 11. Administrative Department**

##### **13 TAC §§11.1-11.4, §§11.7-11.9**

The Texas Historical Commission adopts amendments to §§11.1-11.4 and §§11.7-11.9 under the Administrative Department concerning Commission meetings, election and duties of officers, vacancies, members' code of conduct, donations, and the use of the agency's buildings and grounds, without changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2611).

Adoption of the amendments is necessary to implement administrative, nonsubstantive, changes to these sections. Most amendments are general house cleaning measures necessary to clarify terminology, amend sections for consistency with other rules, and correct references to sections.

No comments were received regarding adoption of these amendments.

The amendments are adopted under Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608694

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



## Chapter 13. State Cemetery

The Texas Historical Commission adopts the repeals of §§13.1-13.26, concerning the state marker program (the provisions of these sections have been transferred to Chapter 21, in order to consolidate the rules governing the activities of the Local History Programs department into one chapter), and adopts new §§13.1-13.2, without changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2613).

The repeals to the original sections were necessitated by the internal restructuring of the agency and will better reflect current agency practices. The agency adopts new §§13.1-13.2 concerning the involvement of the Texas Historical Commission in reviewing the eligibility of persons for burial in the State Cemetery as a result of Senate Bill 21, 74th Texas Legislature, 1995.

No comments were received regarding adoption of the repeals or new sections.

### 13 TAC §§13.1-13.26

The repeals are adopted under the Texas Government Code, Chapter 442, §442.005 (q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365, 74th Texas Legislature, 1995).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608689

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



### 13 TAC §13.1, §13.2

The new sections are adopted under the Texas Government Code, Chapter 442, §442.005, which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365) and Senate Bill 21(74th Texas Legislature, 1995).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608690

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



## Chapter 15. Administration of Federal Programs

### 13 TAC §15.3, §15.6

The Texas Historical Commission adopts amendments to §15.3 concerning membership and purpose of the State Board of Review and §15.6 regarding the citation for statutory authority with regard to the Texas Open Meetings Act, without changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2614).

Adoption of the amendments is necessary to make the rules consistent with federal regulations and better define the board's composition. Amending §15.6 updates the citation for statutory authority with regard to the Texas Open Meetings Act.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Texas Government Code, Chapter 442, §442.005(q) which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608695

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100

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## Chapter 17. State Architectural Programs

The Texas Historical Commission adopts the repeal of §§17.1-17.4, concerning Texas Historic Preservation Grants, the Architectural Visiting Specialist Program, Review of Work on County Courthouses, and the Texas Preservation Trust Fund, and adopts new §§17.1-17.3, without changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2615).

The justification for the repeal of §§17.1-17.4 and the adoption of the new §§17.1-17.3 is to identify obsolete or ambiguous rules, and to clarify definitions, eligibility requirements, procedures, qualifications, and standards.

During the public period, THC received two sets of comments regarding the adoption of the repeals and new sections. The commenters were private citizens. The following are summaries of the comments and THC's response to the comments:

Comment: Comments regarding §17.3, Texas Preservation Trust Fund, question the use and allocations of grant assistance under the authority of Texas Government Code, Chapter 442, §442.015. Questions were also raised regarding proceeds and interest on donations less than \$5000, representation on the Texas Preservation Trust Fund Advisory Board, and the administration of the Trust Fund within the THC.

Response: Comments were distributed to the Executive Committee of the Texas Historical Commission at their regularly scheduled meeting in Amarillo, Texas on May 3, 1996, and the content of these letters were considered prior to their vote to recommend to the full commission approval of the rules as proposed. At the full THC meeting later that day, the discussions of the Executive Committee were reported and Chapter 17 of the rules were adopted unanimously. In summary, the comments concerned the statute that created the Texas Preservation Trust Fund and others dealt more specifically with the rules. The THC is required to track the intent of the statutes in our rules that have been reviewed by our Attorney General's council to ensure consistency.

### 13 TAC §§17.1-17.4

The repeals are adopted under the Texas Government Code, Chapter 442, §442.005 (q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365, 74th Texas Legislature, 1995).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608691

Curtis Tunnell

Executive Director

Texas Historical Commission

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Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100

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## 13 TAC §§17.1-17.3

The new sections are adopted under the Texas Government Code, Chapter 442, §442.005, which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365, 74th Texas Legislature, 1995).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608692

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100

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## Chapter 19. Texas Main Street Project

### 13 TAC §19.5

The Texas Historical Commission adopts an amendment to §19.5 under Texas Main Street Project concerning the elimination of visits to assist with identified local needs in the self-initiated Main Street cities, without changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2621).

Adoption of the amendment is necessary due to reductions in funding for travel and an increase in the number of participating cities.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608696

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100

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## Chapter 21. Local History Programs

The Texas Historical Commission adopts the repeals of §§21.1-21.5 concerning the Local History Programs committee, grant programs for history museums, the Winedale museum seminar and museum on-site consultations, and adopts new §§21.1-21.31, without changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2621).

The repeals eliminate ambiguous language and better reflects current practices and procedures of the agency. The agency adopts new §§21.1-21.31 to better reflect the activities of the Local History Programs department and incorporate current practices and procedures of the agency. Rules for the historic Texas cemetery program are adopted in order to implement a rider in the 1995 Appropriations Bill providing for the registration of historic cemeteries with the Texas Historical Commission.

No comments were received regarding adoption of the repeals or new sections.

### 13 TAC §§21.1-21.5

The repeals are adopted under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608697

Curtis Tunnell

Executive Director

Texas Historical Commission

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Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



### 13 TAC §§21.1-21.31

The new §§21.1-21.31 are adopted under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608698

Curtis Tunnell

Executive Director

Texas Historical Commission

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Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



## Chapter 23. Publications

The Texas Historical Commission adopts the repeals of §23.3 and §23.4 regarding awards presented by the agency, with requirements and criteria detailed in the Texas Preservation Handbook and administered by the Local History Programs department, and adopts new §23.3 regarding the rules of the T.R. Fehrenbach book award, with changes to the proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2625).

Information from §23.3 (Awards) is being transferred to Chapter 21, §21.36, Local History Programs, the department that administers the awards. The language allows a greater understanding of the criteria for the agency's numerous awards and yields information on the different departments that have oversight of the various awards. The agency adopts new §23.3 regarding the rules of the T.R. Fehrenbach book award. The section is adopted with changes to clarify a typographical error regarding the deadline for receipt of nominations for the book award.

No comments were received regarding adoption of the repeals or new sections.

### 13 TAC §23.3, §23.4

The repeals are adopted under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608699

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



### 13 TAC §23.3

The new section is adopted under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

*§23.3. Rules of the T.R. Fehrenbach Book Award of the Texas Historical Commission: 1989-1998.*

The T.R. Fehrenbach Book Award, sponsored by The Dow Chemical Company, is presented annually to outstanding history publications. Requirements and criteria are detailed in the current Texas Preservation Handbook for County Historical Commissions.

(1) The official name of this program shall be the "T.R. Fehrenbach Book Award of the Texas Historical Commission, sponsored by The Dow Chemical Company."



(2) This award program is instituted for the purpose of encouraging and recognizing interest, study, and publication in the field of Texas history.

(3) To be eligible for awards, entries must be nonfiction works in book form devoted to any aspect of Texas history or heritage. All entries should reflect serious scholarship and provide additional knowledge of some part of the Texas past and shall be judged against each other.

(4) Eligible entries must be published in not less than 200 copies during the current contest year.

(5) Nominations for this award may be submitted by any person with an interest in Texas history, together with three copies of the nominated work, to the Texas Historical Commission on the provided official form. No books shall be returned.

(6) Nominations must be received by 5:00 p.m. on the last Friday or working day in December of the contest year.

(7) Winning entries (a maximum of three in any year) shall receive a cash prize of \$1,000 together with an official recognition plaque from the Texas Historical Commission. All winning entries shall receive equal recognition.

(8) Judging of entries and selection of winners shall be done by three distinguished Texas scholars and/or authors appointed by the Texas Historical Commission. All winning entries shall receive equal recognition.

(9) All decisions by the judges shall be final and shall be ratified by the Texas Historical Commission. Neither the commission, The Dow Chemical Company, nor any other party shall have input or influence in the selection of winners or awarding of prizes.

(10) One set of nominated entries shall remain with the Texas Historical Commission; one set shall be retained by The Dow Chemical Company; and one shall be donated to an appropriate public depository.

(11) The Texas Historical Commission shall give the widest possible notice to authors, historians, and publishers, and to the public generally, to bring attention to this program and to encourage the nomination of all eligible entries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608700

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



## Chapter 25. Office of the State Archeologist

### 13 TAC §§25.1, 25.2, 25.4, 25.5, 25.6, 25.7

The Office of the State Archeologist, Texas Historical Commission adopts amendments to §25.1, concerning definitions;

§25.2, concerning determinations of significance; §25.4 concerning consultations; §25.5 concerning inventory of archeological sites; §25.6, concerning archeological collections; and §25.7, concerning protection of archeological sites, without changes to the proposed text as published in April 2, 1996, issue of the *Texas Register* (21 TexReg 2626).

Adoption of these amendments is necessary to implement administrative changes for clarifying terminology and are nonsubstantive.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 442, §442.007, and by the Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code (Senate Bill 365, 74th Texas Legislature, 1995).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608693

Curtis Tunnell

Executive Director

Texas Historical Commission

Effective date: July 9, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 463-6100



## TITLE 22. EXAMINING BOARDS

### Part IV. Texas Cosmetology Commission

#### Chapter 89. General Rules and Regulations

#### 22 TAC §§89.20, 89.43, 89.53, 89.57, 89.60, 89.70, 89.72

The Texas Cosmetology Commission adopts amendments to sections §89.20, concerning length of courses; §89.43, concerning items to be posted in salon or school; §89.53, concerning minimum requirements for private and public cosmetology schools; §89.57, concerning disciplinary hearings; §89.60, concerning continuances; §89.70, concerning new private cosmetology school; §89.72, concerning curriculum. Section 89.53 is adopted with changes to the proposed text as published in the April 23, 1996, issue of the *Texas Register* (21 TexReg 3495). Sections 89.20, 89.43, 89.57, 89.60, 89.70, and 89.72 are published without changes to the proposed text and will not be republished.

The amendments to sections are being adopted as a result of a formal petition brought by the Texas Association of Cosmetology Schools to the Texas Cosmetology Commission as provided for in the Government Code, §2001.021.

The amendments are adopted under Vernon's Texas Civil Statutes, Article 8451a, §4(a), which provide the Texas Cosmetology Commission with the authority to "issue rules consis-

tent with this Act after a public hearing", to protect the public's health and safety.

*§ 89.53. Minimum Requirements for Both Private and Public Cosmetology Schools.*

(a) A building to house a cosmetology school must be fireproof and of permanent type of construction, and contain a minimum of 3,500 square feet of floor space, with separate restrooms for male and female students. The building must be divided into two separate areas: one for classroom instruction and one clinic work area.

(b) A public school cosmetology department is required to have an area of not less than 2,200 square feet, including office dispensing, locker room, restrooms, and with an adjacent classroom. At least 1,200 square feet of the above shall be laboratory space.

(c) The classroom must be separated from the laboratory area by walls extending to the ceiling and equipped with the following:

- (1) one chalkboard
- (2) desks and chairs or table space for a minimum of ten students (plus one desk or chair or table space for additional students enrolled and in attendance per theory class)
- (3) textbook for each student enrolled
- (4) charts covering, bones, muscles, nerves, skin, and nails
- (5) medical dictionary
- (6) visual aid equipment

(A) Dispensary of not less than 50 contiguous square feet with a double sink with hot and cold running water and space for storage and dispensing of supplies and equipment (applicable for schools approved after August 21, 1985).

(B) Lockers and dressing rooms are to be provided.

(C) The school equipment list shall contain:

- (i) six shampoo bowls and six shampoo chairs
- (ii) eight hair dryers with chairs
- (iii) one heat cap or therapeutic light
- (iv) eight dozen cold wave rods
- (v) three electric irons, or marcel stoves and irons
- (vi) 16 styling stations covered with Formica or similar material, with mirror, and 16 styling chairs (swivel or hydraulic)
- (vii) 12 mannequins with sufficient hair with table or attached to styling stations
- (viii) one day/date formatted computer time clock
- (ix) one pair of professional hand clippers
- (x) three professional hand held dryers
- (xi) four manicure tables and four stools
- (xii) one closed cabinet for clean towels
- (xiii) one closed container for soiled towels
- (xiv) four covered trash cans in lab area

(xv) one large wet disinfectant soaking container

(xvi) one dry storage container for disinfected implements.

(7) As enrollment increases, required equipment is subject to increase; all equipment must be in good and sanitary condition.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608719

Dick Strader

Executive Director

Texas Cosmetology Commission

Effective date: July 9, 1996

Proposal publication date: April 23, 1996

For further information, please call: (512) 454-4674



## Part XIV. Texas Optometry Board

### Chapter 280. Therapeutic Optometry

#### 22 TAC §280.5

The Texas Optometry Board adopts an amendment to §280.5, without changes to the proposed text published in the May 3, 1996, issue of the *Texas Register* (21 TexReg 3765).

Section 280.5 is required in order to correct two words which were to have been made as a housekeeping change when the rule was finally adopted and published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1093), but were overlooked for correction. As stated in that adoption preamble, the Texas State Board of Pharmacy commented that the correct name for the DEA was Drug Enforcement Administration (rather than "agency") and that the word "dispensed" within the rule should be more correctly stated "possessed and administered." The rule as adopted allowed the use of cocaine eye drops for diagnostic purposes by therapeutic optometrists.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.03 and §2.14. The Texas Optometry Board interprets §1.03 as authorizing therapeutic optometrists to utilize cocaine eye drops for diagnostic purposes. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608659

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: July 8, 1996  
Proposal publication date: May 3, 1996  
For further information, please call: (512) 305-8500



## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter

#### Subchapter E. Texas Catastrophe Property Insurance Association

##### 28 TAC §5.4001

The Commissioner of Insurance adopts an amendment to 28 TAC §5.4001, the plan of operation of the Texas Catastrophe Property Insurance Association (TCPIA). The amendment was considered by the Commissioner of Insurance in a public hearing on June 5, 1996, Docket Number 2226, and is adopted without changes to the proposed text published in the March 29, 1996 issue of the Texas Register (21 TexReg 2525).

Pursuant to the Catastrophe Property Insurance Pool Act (Article 21.49 of the Insurance Code), the TCPIA was created by the Texas legislature in 1971 and is composed of all property insurers authorized to transact property insurance in Texas. The purpose of the TCPIA is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Pursuant to Article 21.49 §5(b) of the Insurance Code, all members of the TCPIA shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the TCPIA, as furnished to the TCPIA by the Texas Department of Insurance (Department) after review of annual statements, other reports, and other statistics the Department shall deem necessary. The adopted amendment is necessary to require TCPIA member insurers to furnish directly to the TCPIA, at the same time as filed annually with the Department, a copy of the Exhibit of Premiums and Losses (Statutory Page 14 Data) for the State of Texas that is filed as part of the insurer's Texas Fire and Casualty Annual Statement Form 2. In this exhibit, each insurer provides the amount of its annual total direct premiums written for property insurance in Texas which is used by the TCPIA in determining individual insurers' percentage of participation in the TCPIA. The filing of this information with the TCPIA on or before March 1 of each year will enable the TCPIA to determine each member insurer's percentage of participation as soon as possible in the calendar year. Without the adoption of this amendment, the TCPIA has to wait each year for the Department to compile the data, and, as a result, encounters delays in receiving the information. This delayed receipt of the premium data, in turn, delays the TCPIA in calculating on a timely basis the annual percentage of participation for member companies, and thereby delays the TCPIA in providing member insurers with their percentage of participation until after June 1 of each year. TCPIA member insurers' compliance with the adopted amendment will result in the an-

nual premium data being received by the TCPIA on a more timely basis and will enable the TCPIA to calculate the annual percentages of participation for member companies before the official opening of the hurricane season on June 1 of each year. Because the TCPIA will be able to provide these percentages of participation prior to June 1, companies will be able to make more timely marketing decisions for writing windstorm insurance on a voluntary basis. In addition, the determination of member companies' percentage of participation earlier in the year will assure more timely payments of assessments of member companies for payment of losses should a major hurricane occur.

The adopted amendment adds a clause (v) to subsection (c)(2)(B) of the TCPIA plan of operation to provide that to assist the TCPIA in determining each member insurer's percentage of participation in the TCPIA as soon as possible in the calendar year, each member insurer shall furnish to the association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14 Data) for the State of Texas that is filed annually with the Department as part of the insurer's Texas Fire and Casualty Annual Statement Form 2. This exhibit contains annual statement data that formerly has been referred to as page 14 of the Fire and Casualty Form 2 Annual Statement. In this exhibit, each insurer provides the amount of its annual total direct premiums written for property insurance in Texas which is used by the TCPIA in determining individual insurers' percentage of participation in the TCPIA. The adopted amendment places an affirmative obligation on TCPIA member insurers to provide the required annual statement premium data to the TCPIA at the same time this data is filed with the Department.

No comments were received regarding the adoption of the amendment.

The amendment is adopted pursuant to the Insurance Code, Articles 21.49 and 1.03A, and the Government Code §§2001.004-2001.038. Pursuant to Article 21.49 §5(b) of the Insurance Code, all members of the TCPIA shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the TCPIA, as furnished to the TCPIA by the Department after review of annual statements, other reports, and other statistics the Department shall deem necessary. Article 21.49 §5(b) also provides that each member's participation in the TCPIA shall be determined annually in the manner provided in the plan of operation. Article 21.49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the TCPIA plan of operation with the advice of the TCPIA board of directors. Section 5(f) of Article 21.49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act (Government Code, Title 10, Subtitle A, Chapter 2001). Article 21.49, §5, subsections (c) and (f), by their terms, delegate the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article

1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

§5.4001 *Plan of Operation.*

(a)-(b) (No change.)

(c) Financial Operation of the Association.

(1) (No change.)

(2) Assessment of members.

(A) (No change.)

(B) Amount of assessment. The board of directors shall determine which members of the association shall participate in any assessment for operating expenses and/or catastrophe losses. This determination shall be computed on a syndicate year basis rather than on a calendar year basis. The designated members of the association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association as furnished to the association by the Department after review of annual statements, other reports, and required statistics; provided, however, that if at the time of such assessment the Department has not furnished to the association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the association from the last calendar year in which such information is available and, upon obtaining the necessary information from the Department, the association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe area, except that in no event shall the final percentage of participation after application for credit for voluntary writings in the catastrophe area be less than 20% nor more than 190% of the company's percentage of statewide windstorm and hail premiums modified by applicable offset factors, nor more than 170% of the company's percentage of statewide windstorm and hail premium modified by applicable offset factors for policies with inception dates on and after January 1, 1984.

(i)-(iv) (No change.)

(v) To assist the association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14 Data) for the State of Texas that is filed annually with the Department as part of the insurer's Texas Fire and Casualty Annual Statement Form 2.

(C)-(E) (No change.)

(3)-(4) (No change.)

(d)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608788

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: July 29, 1996

For further information, please call: (512) 463-6327

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part IV. Texas Department of Human Services**

**Chapter 254. Operation of the Texas Department on Aging**

**40 TAC §254.7**

The Texas Department on Aging adopts an amendment to §254.7, concerning advisory councils, relating to the Options for Independent Living Advisory Committee, without changes to the proposed text as published in the March 29, 1996, issue of the *Texas Register*(21 TexReg 2527).

The purpose of the amendment is to clarify members' terms and dates of appointment.

The amendments revised the procedure for the length of time and date of term expiration for members of the committee.

Comments were received regarding the proposed amendment from one private individual, disagreeing that advisory council members should serve at the pleasure of the Board. Due to the fact that advisory councils are not required by state law, the agency believes it is appropriate for such councils to serve at the discretion of the Board. In addition, the same individual questioned whether the two-year term limit referred to only the Options for Independent Living Advisory Council or also included the Citizen's Advisory Council. After review, it was determined that the two-year term limits are referenced in paragraph (2) (C) and refers only to the Options for Independent Living Council.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1996.

TRD-9608809

Mary Sapp

Executive Director  
Texas Department on Aging  
Effective date: July 10, 1996  
Proposal publication date: March 29, 1996  
For further information, please call: (512) 444-2727

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Management

##### Claim Procedure

###### 43 TAC §1.68

The Texas Department of Transportation adopts the repeal of §1.68, concerning contract claim procedure, without changes to the proposed text as published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3157).

The section is repealed to provide ease of access to all rules relating to contract management. Repeal of this section is necessary because the subject matter of this section falls within Chapter 9, Contract Management. The subject matter is reenacted in an amended form in new §9.2, which is being contemporaneously adopted.

On April 29, 1996, the department conducted a public hearing on the proposed repeal. No written or oral comments were received.

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608771  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: July 9, 1996  
Proposal publication date: April 12, 1996  
For further information, please call: (512) 463-8630

#### Chapter 3. Finance Division

##### 43 TAC §3.2

The Texas Department of Transportation adopts the repeal of §3.2, concerning prequalification of surety companies, without changes to the proposed text as published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2048).

Insurance Code, Articles 6.16 and 7.19-1 establish prequalification and reinsurance requirements for surety companies. The repeal of §3.2 is necessary to remove duplicative regulation.

A comment deadline of April 12, 1996, was published and no comments were received.

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608770  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: July 9, 1996  
Proposal publication date: March 12, 1996  
For further information, please call: (512) 463-8630

#### Chapter 9. Contract Management

##### Subchapter A. General

###### 43 TAC §9.2

The Texas Department of Transportation adopts new §9.2, concerning contract claim procedure, without changes to the proposed text as published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3158).

Section 9.2 sets forth the procedures to resolve disputes between the department and a contractor working under a highway improvement, professional services, consulting, or aviation contract.

Adoption of this section is necessary to replace, in an amended form, the provisions of §1.68, concerning contract claim procedure. Section 1.68 is being contemporaneously repealed because the subject matter of this section falls within Chapter 9, Contract Management. Section 9.2 also adds aviation contractors to the claim procedure.

Section 9.2 establishes definitions for the section and a contract claim committee or committees. This section provides that: if resolution of a contract claim is not reached with the department, the contractor should file a detailed report and request to be heard by the committee; the committee will secure detailed reports and recommendations from the department, and afford the contractor an opportunity for a meeting to informally discuss the disputed matter; and the committee will give written notice of the committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the committee chairman in writing within 20 days of the date such notice is received, and the chairman will forward the agreed disposition to the executive director for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the committee, the contractor may petition

the executive director for a formal administrative hearing to litigate the claim pursuant to the provisions of §§1.21-1.61 of this title (relating to Contested Case Procedure). This section explains that the committee proceedings are not admissible for any purpose in a formal administrative hearing and requires the contractor to submit the petition within 20 days after notice of the committee's recommendation is received to prevent the recommendation from becoming final and barring further appeal.

On April 29, 1996, the department conducted a public hearing on the new section. No written or oral comments were received.

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608769  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: July 9, 1996  
Proposal publication date: April 12, 1996  
For further information, please call: (512) 463-8630



## Chapter 21. Right of Way

### Utility Accommodation

#### 43 TAC §21.56

The Texas Department of Transportation adopts new §21.56, concerning metric equivalents, without changes to the proposed text as published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3159).

The Omnibus Trade and Competitiveness Act of 1988, Title 15, United States Code, §205(a) and (b) designate the metric system of measurement as the preferred system of weights and measures.

New §21.56 will enable the department to utilize the metric system in its business process and project development. Section 21.56 provides that prior to October 1, 1996, all English units of measurement referenced in §§21.31-21.55 of this title (relating to Utility Accommodations) may be converted to metric, and that on or after October 1, 1996, a utility company must submit its request for accommodation using the metric system of measurement provided in §21.56.

On April 23, 1996, the department conducted a public hearing on the new section. No written or oral comments were received.

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608768  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: July 9, 1996  
Proposal publication date: April 12, 1996  
For further information, please call: (512) 463-8630



## Chapter 23. Travel Information

### Subchapter D. Memorandum of Understanding with the Texas Department of Commerce and the Texas Parks and Wildlife Department

#### 43 TAC §§23.40-23.47

The Texas Department of Transportation adopts new §§23.40-23.47, concerning a Memorandum of Understanding (MOU) with the Texas Department of Commerce (Commerce) and the Texas Parks and Wildlife Department (TPWD), without changes to the text as published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2063).

Government Code, §481.028 requires Commerce to enter into a MOU to cooperate in program planning and budgeting with any other agency involved in economic development. This includes entering into a MOU with the department and TPWD regarding each agencies' efforts to promote tourism. Section 481.028 further directs the agencies to adopt the MOU and all revisions by rule.

Rider 33 to the department's appropriations for Fiscal Years 1996-1997 also requires that the three agencies enter into a MOU to coordinate state spending for travel and tourism promotion.

New §23.40 designates the parties to the MOU.

New §23.41 cites the statutory authority and responsibilities of the parties to promote Texas tourism.

New §23.42 sets forth the agreement of the parties to cooperate on developing and promoting Texas as a premier travel destination through marketing, magazines, TOURTEX 2000, travel information centers, photo files, shows, research/information sharing, community profiles, community education/training, tourism business assistance, 1-800 numbers, fulfillment operation, and collateral materials.

New §23.43 provides that the MOU is effective when executed and shall terminate on August 31, 1999, unless terminated earlier pursuant to §23.44 or unless extended by the mutual agreement.

New §23.44 permits each agency to terminate the MOU.

New §23.45 requires that any alteration, addition, or deletion to the MOU shall be made in writing.

New §23.46 requires each agency to adopt the MOU as a rule.

New §23.47 requires the MOU to be subject to the statutory authority of each agency, all other applicable laws, and appropriations.

On April 2, 1996, the department held a public hearing to receive data, comments, views and testimony concerning proposed new §§23.40-23.47. Two individuals expressed approval of the content of the Memorandum of Understanding (MOU), and one of them suggested revisions to §23.42. The department received written comments from the Big Bend Area Travel Association expressing approval. The Texas Hotel & Motel Association expressed approval and had comments on several points in §23.42.

One commenter suggested changing the language of §23.42(1)(A) to reflect that the tri-agency marketing group will do more than merely develop guidelines and policies for the state's marketing theme. One purpose of the tri-marketing group is to develop guidelines and policies to encourage the use of marketing themes in developing and promoting Texas as a premier travel destination. Section 23.42(1)(B) contains the broader mission statement of the tri-agency marketing group which is to guide and coordinate the statewide travel-related advertisements, promotions, media relations, and collateral pieces of the three agencies.

One commenter suggested eliminating §23.42(1)(C), which relates to the current marketing theme, "Texas. It's Like a Whole Other Country." The commenter stated that the Memorandum of Understanding, as written, could restrict the three agencies from developing a new marketing theme before the terminus of the MOU in 1999. The mention of this theme in the MOU and the intent to develop a licensing agreement for it does not prohibit the tri-agency marketing group from developing a new theme within the confines of the existing MOU. The section allows the development of other themes in the state tourism program. Regardless of whether the theme changes, licensing arrangements need to be developed for the current theme.

One commenter addressed the frequency of meetings between the magazine staffs of Texas Highways and Texas Parks and Wildlife and the media staff of the Texas Department of Commerce (Commerce), as described in §23.42(2). The commenter suggested that the language be changed from "meet at least twice a year" to "meet at least three times per year." Meeting twice a year is designated as the minimum standard for a large, formal meeting of these groups. The department expects that as these groups begin to work together, meetings will occur more frequently to address specific issues and projects. The department recognizes that interaction between the magazine and media staffs provides a significant opportunity for the three agencies to share resources.

One commenter stated that the technology of TOURTEX 2000 in §23.42(3) is obsolete and the subsection referring to it should be rewritten. The subsection describes TOURTEX 2000 only as an electronic information system. That same system will continue to develop and change as TxDOT applies new technical enhancements to it. The language in this section does not limit the application of new technology and encourages

the investigation of additional methods of marketing and other potential outlets for information such as the Internet.

One commenter stated that the language in §23.42(5) is too vague to ensure the consolidation of the agencies' photo libraries. Consolidation has already started. Commerce has closed its photo library and has transferred its images to TxDOT. The TxDOT Photo Library, located at 3608 Jackson Avenue, is an ADA accessible location. At this time, the Texas Parks and Wildlife Department (TPWD) does not plan to consolidate its photo library into the TxDOT/Commerce library. At a minimum, TxDOT will pursue the possibility of obtaining quality duplicates of TPWD's slides for TPWD subjects which are not represented in the TxDOT/Commerce library.

One commenter addressed §23.42(6), and asked if the agencies will have a contingency plan for "late breaking" trade show opportunities. Since all three agencies are appropriated funding by the state legislature, advance planning for budget is required prior to the legislative session. A trade show opportunity that could yield an increase in visitors to the state and in tourism revenue could warrant expending the funds necessary for participation.

One commenter stated that state universities could conduct the tourism research discussed in §23.42(7). The University of Texas and Texas A & M University are often contracted for TxDOT research projects. More specifically, Texas A & M University recently completed a research study for the Travel and Information Division, and will soon embark on another. Further, the MOU does not indicate any specific sources for research. Each agency can independently conduct its research with any suitable private or public organization.

One commenter said that the community training and education for tourism development addressed in §23.42(9)(A) should be handled by private sector organizations. The proposed sections do not contain limitations on outsourcing these education activities.

One commenter objected to the content of §23.42(13)(E), in which each agency reserves the right to produce its own collateral materials when desired or appropriate. The department believes there will be instances in which a publication or collateral item is so specifically tailored to one of the agencies' subject areas that it would not be relevant to the tri-agency Travel Literature Unit.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes; Government Code, §481.028, which directs that the MOU be adopted by rule; and Texas Civil Statutes, Article 6144e, which provides the Texas Transportation Commission with the authority to publish pamphlets, bulletins, maps, and documents to serve the motoring public and road users and to maintain and operate Travel Information Bureaus at the principal gateways to Texas to provide road information, travel guidance, and various descriptive materials designed to aid and assist the traveling public and stimulate travel to and within Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608767

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: July 9, 1996

Proposal publication date: March 12, 1996

For further information, please call: (512) 463-8630



## Chapter 28. Oversize and Overweight Vehicles and Loads

### Subchapter A. General Provisions

#### 43 TAC §28.2

The Texas Department of Transportation adopts an amendment to §28.2, concerning definitions, with changes to the proposed text as published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3160).

The amended section is necessary to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

House Bill 2754, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6701a-2, to include a definition for "portable building unit." Senate Bill 971, 74th Legislature, 1995, re-codifies the statutes relating to transportation to the Transportation Code.

Amended §28.2 establishes the definitions as used in this subchapter. The amendments to this section include a new definition for "portable building unit," and the replacement of references to Texas Civil Statutes with the appropriate Transportation Code citations.

A comment deadline of May 12, 1996, was published and no comments were received. However, the department is adding the definition of Motor Carrier Division to reflect the reorganization of the department.

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

#### §28.2. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

Closeout - The procedure used by the MCD to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

Foreign commercial vehicle annual registration - An annual registration permit issued by the department to foreign commercial vehicles under authority of Transportation Code, §502.353.

Highway maintenance fee - A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

Highway use factor - A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

Load-restricted bridge - A bridge that is restricted by the commission, under the provisions of Transportation Code, §621.301, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

Load-restricted road - A road that is restricted by the commission, under the provisions of Transportation Code, §621.301, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

Machinery plate - A license plate issued under Transportation Code, §502.276, to a crane or oil well servicing unit.

Motor Carrier Division (MCD) - The Motor Carrier Division of the department.

One-trip registration - Temporary registration issued by the MCD on Form 1700, under Transportation Code, §502.354, to an unladen vehicle authorizing its operation on a state highway from a specific origin to a specific destination, along such intermediate points as may be set forth on Form 1700, for a period not longer than 15 days.

Overdimension load - A crane, oil well servicing unit, vehicle, a combination of vehicles, vehicle and its load, or combination of vehicles and load that exceeds maximum legal width, height, length, or weight as set forth by Transportation Code, §622.951.

Overheight - An overdimension load that exceeds the maximum height specified in Transportation Code, §621.207.

Overlength - An overdimension load that exceeds the maximum length specified in Transportation Code, §621.203.

Overweight - An overdimension load that exceeds the maximum weight specified in Transportation Code, §621.101.

Overwidth - An overdimension load that exceeds the maximum width specified in Transportation Code, §621.201.

Permit plate - A license plate issued under Transportation Code, §623.149, to a crane or an oil well servicing vehicle.

Portable building unit - The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled or kit (unassembled) configuration when loaded for transport.

Renewal application form - A form, supplied by the MCD to each permittee receiving a time permit issued under Transportation Code, §623.142 or §623.192, which must be completed and returned to the MCD whenever the permit is to be renewed or closed out.

State highway system - A network of roads and highways as defined by Transportation Code, §221.001.



Vehicle supervision fee - A fee required by Transportation Code, §623.078, paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608766

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: July 9, 1996

Proposal publication date: April 12, 1996

For further information, please call: (512) 463-8630

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# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation,

Graphic Material will not be reproduced in the Acrobat version of this issue of the Texas Register due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

# OPEN MEETINGS

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Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

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### **Alcohol and Drug Abuse, Texas Commission on**

Tuesday, July 2, 1996, 10:00 a.m.

2626 S. Clack Street, MHMR Building

Abilene, Texas

Regional Advisory Consortium, (RAC) Region 2

#### **AGENDA**

##### **Call to Order**

Welcome and introduction of members and guests; drawing for member terms; election of officers; review of regional funding; work session on regional funding; discussion period; and adjournment.

Contact: Annette Wieser, Field Representative, Texas Commission on Alcohol and Drug Abuse, 1545 Mockingbird Lane, Dallas, Texas 75235, (214) 630-1611, Ext. 238.

Filed: June 19, 1996, 2:49 p.m.

TRD-9608841

### **Texas Boll Weevil Eradication Foundation**

Friday, June 28 10:00 a.m.

3101 Oldham Lane

Abilene, Texas

Assessment Committee

#### **AGENDA**

##### **Call to Order**

Grower Information Data Collection — 1996, 1997

Payment Extension Agreements

Proposed Regulations

Alternate Methods of Assessment

Adjourn

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, (915) 672-2800, 1-(800) 687-1212.

Filed: June 20, 1996, 10:59 a.m.

TRD-9608881

Monday, July 1, 10:00 a.m.

3101 Oldham Lane

Abilene, Texas

Assessment Committee

#### **AGENDA**

##### **Call to Order**

Opening Remarks and Introduction

Discussion & Action: Review Minutes from Prior Meeting; Financial Report.

Adjourn to Executive Session

Executive Session: To Consult with attorney in accordance with Tex. Govt. Code. Ann, Sec 551.071.

Adjourn Executive Session

Reconvene Board Meeting

Discussion & Action: Executive Session; Referendums; Recall Petition Regulations; Personnel; Procurement/Contracting Policy; Executive Director's Report; TDA Report; Extension Report; Aphis Report; NCC Report; Chairman's Report. Next Meeting Time and Place.

Discussion: Other Business

Adjourn

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, (915) 672-2800, 1-(800) 687-1212.

Filed: June 20, 1996, 10:59 a.m.

TRD-9608881

### **Bond Review Board, Texas**

Friday, June 28, 1996 10:00 a.m.

Room 106, Reagan Building  
105 West 15th Street  
Austin, Texas

#### AGENDA

##### I. Call to Order

##### II. Consideration of Proposed Issues

A. Texas Department of Housing and Community Affairs — Multi-Family Housing Revenue Bonds (Dallas-Fort Worth Apartments Project ) Series 1996 A-D

B. Texas Department of Housing and Community Affairs — Multi-Family Housing Revenue Bonds (Harbors and Plumtree Apartments Project) Series 1996 A-D

##### III. Adjourn

Contact Albert L. Bacarisse, TBRB, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741. TRD 9608897  
Filed: June 20, 1996, 10:00 a.m.

TRD-9608897

### **Early Childhood Intervention, Interagency Council on**

Thursday, June 27, 1996, 9:30 a.m.

1100 West 49th Street

Austin, Texas

#### AGENDA

Interagency Council on Early Childhood Intervention Internal Audit Sub-Committee Meeting. Public Comment. Discussion and Approval of Minutes from May 23, 1996 Meeting. Discussion and Approval of the Early Childhood Intervention Advisory Committee and Director's Forum Report. Discussion and Approval of Internal Audit Reports for Fiscal Year 1996 for Administration and the Division of Management and Budget. Discussion and Approval of a Process for Selection of an Internal Auditor for Fiscal Year 1997. Discussion and Review of "Draft" Internal Audit Report for Fiscal Year 1996 for the Division of Provider Funding. Discussion and Review of the "Draft" Legislative Appropriations Request for the 1998-1999 Biennium. Discussion and Approval of Emergency Requests Policy Appeal Process. Discussion and Update on Application Review Process for Fiscal Year 1997. Discussion and Review of "Fee For Services" Issue Paper. Discussion Related to Revisions of Chapter 73, Human Resources Code for the 75th Legislative Session. Discussion and Approval of Staff Recommendation to Continue Funding East Seal Society of the Rio Grande Valley Early Childhood Intervention Program. Election of Chairperson and Vice Chairperson for the Interagency Council on Early Childhood Intervention. Discussion and Update on Partners with Children and Families Project.

Contact: Donna Samuelson, 1100 West 49th St. Austin, Texas 78756-3199, (512) 502-4900.  
Filed: June 20, 1996, 10:16 a.m.

TRD-9608880

### **Education Agency, Texas (TEA)**

Monday, July 8, 1996 1:00 p.m.

Room 1-100, William B. Travis Bldg., 1701 N. Congress Avenue  
Austin, Texas

State Textbook English and Spanish Social Studies Committees

#### AGENDA

A joint hearing before the commissioner of Education and the 1996 State Textbook English and Spanish Social Studies Committees will be held at 1:00 p.m. on Monday, July 8, 1996. Testimony at the hearing is limited to residents of Texas who submitted written requests to appear on or before the June 14, 1996 deadline. Representatives of publishing companies will be allowed time to respond to testimony at the hearing. State Textbook English and Spanish Social Studies Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1996.

Contact: Debra Kile, Texas Education Agency; 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 24, 1996, 9:30

TRD-9609020

Monday, July 8, 1996, 9:00 p.m.

Room 1-100, William B. Travis Bldg., 1701 N. Congress Avenue  
Austin, Texas

State Textbook English and Spanish Social Studies Committees

#### AGENDA

A joint hearing before the commissioner of Education and the 1996 State Textbook Science Committees will be held at 9:00 a.m. on Monday, July 8, 1996. Testimony at the hearing is limited to residents of Texas who submitted written requests to appear on or before the June 14, 1996 deadline. Representatives of publishing companies will be allowed time to respond to testimony at the hearing. State Textbook Science Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1996.

Contact: Debra Kile, Texas Education Agency; 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 24, 1996, 9:29 a.m.

TRD-9609025

### **Educator Certification, State Board for**

Friday, June 28, 1996 2:00 p.m., Saturday, June 29, 1996, 9:00 a.m.

Frito-Lay Headquarters, 7701 Legacy Drive

Plano, Texas

#### REVISED AGENDA

In the last listing, an error was stated that this meeting was noted as not being subject to the Open Meeting Act. This meeting is an open meeting and is subject to the Open Meetings Act.

Contact: Denise Jones, State Board for Educator Certification, 1701 N. Congress Avenue, Austin, Texas 78701, (512) 475-3136.

Filed: June 20, 1996, 2:15 p.m.

TRD-9608890

### **National Guard Armory Board, Texas**

Saturday, June 29, 1996, 10:00 a.m.

200 W. 35th Street, Camp Mabry, Building 64

Austin, Texas, 78703

#### AGENDA

Administrative Matters

Executive Director's Update

Executive Session

Property Action

Public Comments

Establish Date of Next Meeting

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Julie Wright at least three days prior to the meeting, so that arrangements can be made.

Contact: Julie Wright, P.O. Box 5426, Austin, Texas 78763, (512) 406-6971.

Filed: June 20, 1996, 8:38 a.m.

TRD-9608873

### **Health, Texas Department of**

Thursday, June 21, 1996, 3:00 p.m. 8:00 p.m.

Sycamore Room, Austin Airport Hilton Hotel

6000 Middle Fiskville Road

Austin, Texas

Medical Radiologic Technologist Advisory Committee, Rules Subcommittee

#### AGENDA

The subcommittee will discuss and possibly act on: introduction of members, guests and staff; approval of minutes from the March 9, 1996 meeting; program administrator's report; proposed amendments to rules (25 TAC, §§143.1-143.15 and 143.17); proposed amendments or new rules (dangerous or hazardous procedures performed by (a certified medical radiologic technologist or practitioner; a limited medical radiologic technologist; a registered nurse; a physician assistant; or in an emergency); training requirements for (physician assistants, registered nurses, and non-certified technicians performing podiatric radiologic procedures); cardiovascular technologist performing radiologic procedures; graduates of and students in accredited radiography education programs and training for non-certified technician; pediatric radiography; and hardship exemptions); proposed new rules relating to issues to be addressed in Attorney General Opinion (RQ-867) if issued by 6-20-06 (proficiency examination for non-certified technicians; continuing education for non-certified technicians; fees; direct supervision of employed students; and other); and public comment.

Contact: Donna Hardin Flippin, 1100 West 49 Street, Austin, Texas 78756, (512) 834-6617. For ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 4, 1996, 4:29 p.m.

TRD-9607820

Saturday, June 22, 1996, 10:30 a.m.

Sycamore Room, Austin Airport Hilton Hotel

6000 Middle Fiskville Road

Austin, Texas

Medical Radiologic Technologist, Advisory Committee

#### AGENDA

The Board will discuss and possibly act on: introduction of members, guests and staff; approval of minutes from the March 10, 1996 meeting; program administrator's report; report of rules subcommittee; consideration and action on proposed amendments to rules (25 TAC, §§143.1-143.15 and 143.17); proposed amendments or new rules (dangerous or hazardous procedures performed by (a certified medical radiologic technologist or practitioner; a limited medical radiologic technologist; a registered nurse; a physician assistant; or in an emergency); training requirements for (physician assistants, registered nurses, and non-certified technicians performing pediatric radiologic procedures); cardiovascular technologist performing radiologic procedures; graduates of and students in accredited radiography education programs and training for non-certified technician; pediatric radiography; and hardship exemptions); proposed new rules relating to issues to be addressed in Attorney General Opinion (RQ-867) if issued by 6-20-06 (proficiency examination for non-certified technicians; continuing education for non-certified technicians; fees; direct supervision of employed students; and other); public comment, and announcement of next meeting dates.

Contact: Donna Hardin Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 4, 1996, 4:29 p.m.

TRD-9607821

Thursday, June 13, 1996, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin, Texas

Family Planning Advisory Council

#### AGENDA

The subcommittee will meet to discuss and possibly act on: approval of the minutes of March 14, 1996 meeting; approval of discussion items from March 14, 1996 meeting; report from representative of Regional Coordinating Committee Chairpersons; managed care briefing; abuse reporting by family planning providers-roles and responsibilities; Titles C and XX funding update; Family Planning Futures Project Committee —preliminary recommendations; public comment; announcements.

Contact: Mike McAnally, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 4, 1996, 4:29 p.m.

TRD-9607826

Thursday, June 27, 1996, 9:30 a.m. & 1:30 p.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street  
Austin, Texas

Health And Clinical Services Committee

#### AGENDA

At 9:30 a.m., the committee will hold a public meeting to discuss the child Health and Safety Initiative established by the Texas Board of Health as a strategic priority. At 1:00 p.m., the committee will discuss and possibly act on: approval of the minutes of the May 23, 1996, meeting; final adoption of rules concerning reportable diseases and notification to certain public safety personnel of possible exposure to disease under the Communicable Disease Prevention and Control Act; final adoption of rules for Medically Underserved Community-State Matching Incentive Program; and Title V Futures Project update.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 19, 1996, 12:14 p.m.

TRD-9608825

Thursday, June 27, 1996, 11:30 a.m.

Moreton Building, Room M-652, Texas Department of Health  
1100 West 49th Street  
Austin, Texas

Texas Board of Health

#### AGENDA

Board of Health Luncheon with the President and Board Members from the Children's Hospital Association of Texas

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 19, 1996, 12:14 p.m.

TRD-9608826

Thursday, June 27, 1996, 2:00 p.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street  
Austin, Texas

Health Financing Committee

AGENDA: The committee will discuss and possibly act on: approval of the minutes of the May 23, 1996, meeting; recommendation to the State Medicaid Director concerning proposed Medicaid Organ Transplant Diagnosis Related Groups Reimbursement rules. The committee will go into an Executive Session to discuss pending litigation (Texas Pharmacy Association et. al. vs. Texas Department of Health Concerning reimbursement rates for pharmacy services in the Medicaid Vendor Drug Program; and Community Health Center Network, L.P. et. al. vs. Dr. David R. Smith, Commissioner, Texas Department of Health et. al. concerning the procurement process to participate in the Department's Medicaid Managed Care Program); and contemplated litigation (Tarrant and Lubbock County Hospital

Districts potential lawsuit against the Texas Department of Health and the Health and Human Services Commission challenging the implementation of the proposed Medicaid pilot programs in Tarrant and Lubbock Counties).

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 19, 1996, 12:14 p.m.

TRD-9608827

Thursday, June 27, 1996, 3:00 p.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street  
Austin, Texas

Strategic Management Committee

AGENDA: The committee will discuss and possibly act on: Approval of the minutes of the May 24, 1996, meeting; proposed Fiscal Year 1886 general revenue transfers; border health update; congressional report; Board of Health strategic priorities; update on electronic notification of Advisory Committee vacancies; monthly financial report (historically Underutilized businesses, Chronically Ill and Disabled Children's Program, full time equivalents, new laboratory, and monthly financial update); and update on Fiscal Year 1997 operating budget and Fiscal Year 1998-1999 legislative appropriations request.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 19, 1996, 12:14 p.m.

TRD-9608828

Friday, June 28, 1996, 8:30 a.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street  
Austin, Texas

Texas Board of Health, Board Briefing

AGENDA: The board will receive a briefing on the current activities of the Texas Department of Health by the Commissioner; and will have a discussion concerning procedural and/or administrative issues of the Board of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 20, 1996, 4:33 p.m.

TRD-9608910

Friday, June 28, 1996, 8:30 a.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street  
Austin, Texas

Texas Board of Health, Board Briefing

AGENDA: The committee will meet to discuss and possibly act on: approval of the minutes of the May 23, 1996, meeting; appointment to the Oral Health Services Advisory Committee; and appointment to the Midwifery Board.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 20, 1996, 4:33 p.m.

TRD-9608911

Friday, June 28, 1996, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin, Texas

Texas Board of Health, Board Briefing

AGENDA: The committee will meet to discuss and possibly act on: approval of the minutes of the May 23, 1996, meeting; appointment to the Oral Health Services Advisory Committee; and appointment to the Midwifery Board.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 20, 1996, 4:33 p.m.

TRD-9608911

Friday, June 28, 1996, 11:00 a.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin, Texas

Texas Board of Health, Regulatory Committee

AGENDA: The committee will meet to discuss and possibly act on: approval of the minutes of the May 23, 1996, meeting; Environmental and Consumer Health (Presentation on Mammography Certification; proposed rules concerning production, processing, and distribution of bottled water; and final adoption of rules concerning Licensing and Radiation Safety Requirements for Irradiators); Health Care Quality and Standards (final adoption of rules concerning placement of Kinesiotherapists on the Registry for providers of health-related services; proposed rule concerning out-of-hospital Do Not Resuscitate (DNR) order; and update on the Massage Therapy Registration Program).

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 20, 1996, 4:34p.m.

TRD-9608912

Friday, June 28, 1996, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin, Texas

Texas Board of Health, Regulatory Committee

AGENDA: The board will discuss and possibly act on: approval of the minutes from the May 24, 1996 meeting; Commissioners' report; Texas Board of Health "Moment of Truth" awards; Strategic Management Committee report (approval of proposed Fiscal Year 1996 general revenue transfers); Health Financing Committee report (recommendation to the State Medicaid Director concerning proposed rules regarding Medicaid organ transplant diagnosis related groups reimbursement); Health and Clinical Services committee report (final adoption of rules concerning reportable disease and notification to certain public safety personnel of possible exposure to disease under the Communicable Disease Prevention and Control Act; and final adoption of rules for Medically Undeserved Community-State Matching Incentive Program); Human Resources Committee report (appointment to the Oral Health Services Advisory Committee; and appointment to the Midwifery Board); Regulatory Committee report (proposed rules concerning production, processing, and distribution of bottled and vended water; final adoption of rules concerning licensing and radiation safety requirements for irradiators; final adoption of rules concerning placement of kinesiotherapists on the registry for providers of health-related services; and proposed rule concerning out-of-hospital Do Not Resuscitate (DNR) Order); public comments not requiring board action; announcements and comments not requiring board action; and meet date set for July, 1996.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request ADA accommodation, contact Renee Rusch, (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: June 20, 1996, 4:34p.m.

TRD-9608913

## **Higher Education Coordinating Board, Texas**

Wednesday, June 26, 1996, 8:00 am

Chevy Chase Office Complex, Bldg. 4

Austin, Texas

SCR 124 Advisory Committee

AGENDA

Discussion of the initial results of the regional focus group study conducted by MGT of America, Inc. The group will discuss: (1) the initial draft report of the Advisory Committee to the Coordinating Board concerning the advisability and feasibility of establishing regions of principal responsibility for health professions education: ad (2) the remaining activities to be completed before the report is considered by the Coordinating Board at its October 1996 meeting.

Contact: Karen Williams, THECB, Health Affairs Division, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483-6540.

Filed: June 21, 1996, 1:18 p.m.

TRD-9608801

## **Insurance, Texas Department of**

Monday, July 8, 1996 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA



To consider if disciplinary action should be taken against Alberto G. Lopez, Laredo, Texas, who holds a Group I, Legal Reserve Life Insurance Agent License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701 (512) 463-6328.

Filed: June 21, 1996, 3:26 p.m.

TRD-9608991

Thursday, July 11, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin, Texas

#### AGENDA

To consider if disciplinary action should be taken against Candice Michele Ramirez, Sequin and Dallas, Texas, who holds a Group I, Legal Reserve Life Insurance Agent License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701 (512) 463-6328.

Filed: June 21, 1996, 3:26 p.m.

TRD-9608990

Thursday, July 11, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin, Texas

#### AGENDA

In the Matter of AGRICULTURAL and GENERAL INSURANCE COMPANY, LTD. & CAYMANX TRUST COMPANY (continued from 6-10-96).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701 (512) 463-6328.

Filed: June 21, 1996, 3:33 p.m.

TRD-9608989

### **Licensing and Regulation, Texas Department of**

Tuesday, July 2, 1996 9:00 a.m.

920 Colorado, E.O. Thompson Bldg., 4th Floor, Room 420

Austin, Texas 78701

#### AGENDA

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against and revocation of the auctioneer license of the Respondent, Sherman Wright, for two separate violations of 16TEX. ADMIN. CODE (TAC) § 67.101(4) and to consider the claim of D.B. McDonald, claimant, to determine the amount due the aggrieved party pursuant to the TEX.REV.CIV.STAT.ANN.art.8700 (the Act) and Article 9100, the TEX. GOV'T CODE ch.2001 (APA), and 16 T.A.C.ch 67.

Contact Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Bldg., Austin, Texas 78701, (512) 463-3192.

Filed: June 20, 1996, 4:06 p.m.

TRD-9608908

Tuesday, July 2, 1996 10:00 a.m.

920 Colorado, E.O. Thompson Bldg., 4th Floor, Room 420

Austin, Texas 78701

#### AGENDA

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent: Jerry Lynn Anthony, for failing to maintain insurance requirements and furnish proof of insurance in violation of 16TEX. ADMIN. CODE (TAC) §§ 75.40(b) and 75.40(e), pursuant to the TEX.REV.CIV.STAT.ANN.art.8861 (the Act) and Article 9100, the TEX. GOV'T CODE ch.2001 (APA), and 16 T.A.C.ch75.

Contact Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Bldg., Austin, Texas 78701, (512) 463-3192.

Filed: June 20, 1996, 4:06 p.m.

TRD-9608907

Tuesday, July 2, 1996 10:30 a.m.

920 Colorado, E.O. Thompson Bldg., 4th Floor, Room 420

Austin, Texas 78701

#### AGENDA

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent: Edward Gordon Alford, for failing to maintain insurance requirements and furnish proof of insurance in violation of 16TEX. ADMIN. CODE (TAC) §§ 75.40(b) and 75.40(e), pursuant to the TEX.REV.CIV.STAT.ANN.art.8861 (the Act) and Article 9100, the TEX. GOV'T CODE ch.2001 (APA), and 16 T.A.C. ch75.

Contact Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Bldg., Austin, Texas 78701, (512) 463-3192.

Filed: June 20, 1996, 4:06 p.m.

TRD-9608906

Wednesday July 3, 1996, 9:00 a.m.

920 Colorado, E.O. Thompson Bldg., 4th Floor, Room 420

Austin, Texas 78701

#### AGENDA

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the respondent, David Bruce Christman, for failing to maintain insurance requirements and to furnish proof of insurance in violation of 16 TEX.ADMIN.CODE (T.A.C.)§§75.40(b) AND 64.40(e), pursuant to the TEX.REV.CIV.STAT.ANN.art 8861(the Act) and Article 9100, the TEX GOV'T CODE ch. 2001 (A.P.A.), and 16 T.A.C.ch. 75.

Contact Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Bldg., Austin, Texas 78701, (512) 463-3192.

Filed: June 22, 1996, 8:47 a.m.

TRD-9608924

Wednesday, July 3, 1996, 9:30 a.m.

920 Colorado, E.O. Thompson Bldg., 4th Floor, Room 420  
Austin, Texas 78701

#### AGENDA

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the respondent, Jo Anthony Kibbe, for failing to maintain insurance requirements and to furnish proof of insurance in violation of 16 TEX. ADMIN. CODE (T.A.C.) §§75.40(b) and 75.40(e), pursuant to the TEX. REV. CIV. STAT. ANN. art. 8861 (the act) and Article 9100, the TEX. GOV'T. CODE ch.2001 (APA), AND 16 T.A.C. CH 75.

Contact Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Bldg., Austin, Texas 78701, (512) 463-3192.

Filed: June 21 1996, 8:48 a.m.

TRD-9608925

Wednesday, July 3, 1996 10:00 a.m.

920 Colorado, E.O. Thompson Bldg., 4th Floor, Room 420

Austin, Texas 78701

#### AGENDA

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the respondent, Leslie Joe McFarland, for failing to maintain insurance requirements and to furnish proof of insurance in violation of 16 TEX. ADMIN. CODE (T.A.C.) §§75.40(b) and 75.40(e), pursuant to the TEX. REV. CIV. STAT. ANN. art. 8861 (the act) and Article 9100, the TEX. GOV'T. CODE ch.2001 (APA), AND 16 T.A.C. ch. 75.

Contact Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Bldg., Austin, Texas 78701, (512) 463-3192.

Filed: June 21 1996, 8:48 a.m.

TRD-9608923

### Medical Examiners, Texas State Board of

Saturday, June 22, 1996, 8:30 a.m.

333 Guadalupe, Tower 2

Austin, Texas

Emergency Revised Agenda

#### AGENDA

In addition to previously posted agenda, the following have been added; approval of additional agreed orders and request for termination of suspension of license concerning Stephen Longmire, M.D.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016

Filed: June 20, 1996, 3:37 p.m.

TRD-9608902

Thursday, June 20, 1996, 11:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin, Texas

Emergency Revised Agenda

#### AGENDA

Call to order; roll call; Consideration of return to active practice from retired status, Chester A. Vaughn, M.D. Adjourn.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016

Filed: June 20, 1996, 3:37 p.m.

TRD-9608903

### Natural Resource Conservation Commission, Texas

Tuesday, July 30, 1996 10:00 a.m.

Municipal Court Council Chambers, 114 South Main Street

Crandall, Texas

#### AGENDA

Notice of public hearing before an administrative law judge of the State Office of Administrative Hearings on an application by THE CITY OF CRANDALL for proposed Water Quality Permit Amendment No. 10834-01 to authorize and increase in the discharge of treated domestic wastewater effluent. The facility is located about 2,000 feet southwest of the intersection of Buffalo Creek and FM 148 in Kaufman County, Texas.

Contact: Susan Prior, P.O. Box 13025, Austin, Texas (512) 475-4993.

Filed: June 19, 1996, 10:21 a.m.

TRD-9608811

Thursday, July 10, 1996 9:30 a.m.

Texas A & M University, Conrad Blucher Institute, 6300 Ocean Drive

Corpus Christi, Texas

#### AGENDA

I. Call to Order/Introduction/Minutes.

II. Introduction to Environmental Goals Mini-Workshop

III. Breakout Groups

IV. Breakout Groups Summaries

V. Septic System Project Discussion

VI. Additional Items/Adjournment

Contact: Richard Volk, TAMUCC, Natural Resource Center 3300, 6300 Ocean Drive, Corpus Christi, TX 78412, (512) 980-3420.

Filed: June 21, 1996, 11:36 a.m.

TRD-9608956

### Protective and Regulatory Services, Texas Department of

Tuesday, July 2, 1996 at 10:00 a.m.

Winters Complex, 601 West 51st St. Room 125, West Side/Public Hearing Room

Austin, Texas

## AGENDA

1. Call to Order
2. Review status of Legislative Appropriations Request
3. Adjourn

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554,  
Austin, Texas, 78714-9030, (512) 438-4435.  
Filed: June 24, 1996, 9:47 a.m.

TRD-9609028

## Railroad Commission of Texas

Tuesday, July 2, 1996 9:30 am

1701 N. Congress, 1st Floor Conference Room 1-111

Austin, Texas 78701

## AGENDA

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Office of General Counsel, P.O. Box 12967,  
Austin, Texas, 78711, (512) 463-7033, (512) 463-7033  
Filed: June 11, 1:07 p.m.

TRD-9608963

Tuesday, July 2, 1996 9:30 am

1701 N. Congress, 1st Floor Conference Room 1-111

Austin, Texas 78701

## AGENDA

Status Update, discussion and possible action on various Kennedy Heights issues.

Contact: Terri Eaton, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas, 78711, (512) 463-7033, (512) 463-7033  
Filed: June 21, 2:47 p.m.

TRD-9608974

Tuesday, July 2, 1996, 9:30 am

1701 N. Congress, 1st Floor Conference Room 1-111

Austin, Texas 78701

## REVISED AGENDA

Consideration and action on procedures for obtaining exceptions under Statewide rule 38 (16 TAC§3.38).

Contact: Terri Eaton, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas, 78711, (512) 463-7033.  
Filed: June 24, 9:13 a.m.

TRD-9609023

## Real Estate Commission, Texas

Monday, June 24, 1996 9:30 a.m.

Conference Room 235, TREC Headquarters Office, 1101 Camino La Costa

Austin, Texas, 78752

## AGENDA

Call to order; Minutes of May 13, 1996 Commission meeting; Staff reports for April 1996; committee reports; Comments from visitors; Discussion and possible action to adopt; (a) amendment to 22 TAC §535.300, concerning advertising by residential rental locators; (b) amendment to 22 TAC § 535.91, concerning renewal applications; Discussion and possible action to propose: (a) amendment to 22 TAC §537.45, concerning lead-based paint misleading advertising and signs; Discussion and possible action to approve supplemental information regarding exceptional items for the LAR for FY 1998 and 1999; Executive session to discuss pending litigation pursuant to Section 551.071, Texas government Code and conduct evaluation of the administrator pursuant to Section 551.074, Texas Government Code; Discussion and possible action to authorize payments from recovery funds; Discussion and possible action on evaluation of administrator; Discussion of interpretation of law and rules regarding "bandit" signs; Discussion of statutory prohibitions against payment of fees to unlicensed persons or sharing fees without consent; Discussion and possible action to establish policy regarding investigations of judgments against licensees indicating possible violations of The Real Estate License Act; Discussion and possible Action regarding completion of investment training offered by the Governor's Office; Discussion and possible action to modify audit schedule for the internal audit plan; Discussion and possible action to approve real estate inspection recovery fund investment policy and clarify authority of investment officer to include real estate inspection recovery fund; Discussion and possible action to approve education providers, courses or instructors; Consideration of complaint information concerning: Delbert Lee Turk; Gerald D. Anderson; Reymundo Munoz; Ronald Rae Barrick; Wayne Victor Slater; Vicki Gail Slater; Richard W. Hill; Beverly Ann Burton; Onyuwoma Nicholas Igbokwe; Scheduling of future meetings.

Contact: Mark A. Moseley, General Counsel, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900. For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to the meeting.  
Filed: June 13, 1996, 12:09 p.m.

TRD-9608454

## Teacher Retirement System of Texas

Thursday, June 27, 1996, 8:00 a.m.

1000 Red River, Room 229E

Austin, Texas 78701-2698

Board of Trustees Audit Committee

## AGENDA

1. Approval of Official Minutes of the March 28, 1996 Audit Committee Meeting
2. Review of State Auditor's Office 1995 Report to Management
3. Discussion of Audit Committee Responsibilities — External Audits

4. Discussion of Audit Planning for TRST Subsidiary Corporations
5. Review of TRST Milwaukee, Inc. —Construction
6. Quarterly Report of the Internal Audit Department
7. Discussion of Audit Plan for 1996/1997 (a) Risk Assessment Process (b) Internal Audit Proposed budget.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance contact Mary Godzik, (512) 397-6400 or T.D.D.(512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: June 19, 1996, 3:40 p.m.

TRD-9608854

Thursday, June 27, 1996, 10:00 a.m.

1000 Red River, Room 229E

Austin, Texas 78701-2698

Board of Trustees Budget Committee

#### AGENDA

1. Approval of Minutes of May 31, 1996 Meeting
2. Review of Proposed Operating Budgets for Fiscal Years, 1997, 1998, 1999

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance contact Mary Godzik, (512) 397-6400 or T.D.D.(512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: June 19, 1996, 3:40 p.m.

TRD-9608852

Thursday, June 27, 1996, 11:00 a.m.

1000 Red River, Room 420E

Austin, Texas 78701-2698

Board of Trustees Nominations Committee

#### AGENDA

1. Approval of Minutes of May 31, 1996 Meeting
2. Evaluation of TRS Investment Counsel

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance contact Mary Godzik, (512) 397-6400 or T.D.D.(512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: June 19, 1996, 3:40 p.m.

TRD-9608851

Thursday, June 27, 1996, 12:00 noon

1000 Red River, Room 514E

Austin, Texas 78701-2698

Board of Trustees Real Estate Committee

#### AGENDA

1. Approval of Minutes of May 31, 1996 Meeting
2. Update on Mortgage Risk Ratings
3. Deloitte Touche: Presentation on Performance Measurement and Advisor Evaluation Process

#### Discussion of Current Advisor Activity

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance contact Mary Godzik, (512) 397-6400 or T.D.D.(512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: June 19, 1996, 3:41 p.m.

TRD-9608850

Thursday, June 27, 1996, 1:30 p.m.

1000 Red River, 5th Floor Board Room

Austin, Texas 78701-2698

Board of Trustees Investment Committee

#### AGENDA

1. Approval of Minutes of March 28, 1996 Meeting
2. Discussion of Investment Activities — Mr. Young
3. Consideration of Equity Approved Universe- Mr. Young
4. Consideration of Recommended Allocation of Cash Flow for Current Quarter — Mr. Young (a) Cash Flow Analysis, (b) Staff Recommendation for Cash Flow

5. Review of Investments — Staff (a) Total Portfolio, (b) Equity Portfolio, (c) Fixed Income Portfolio, (d) Real 6. Review of Portfolio Performance — Mr. Record, Wellington Management Company

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance contact Mary Godzik, (512) 397-6400 or T.D.D.(512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: June 19, 1996, 3:41 p.m.

TRD-9608853

Friday, June 28, 1996, 8:30 a.m.

1000 Red River, 5th Floor Board Room

Austin, Texas 78701-2698

Board of Trustees

#### AGENDA

1. Roll Call of Board Members
2. Public Comments
3. Approval of Minutes of May 31, 1996 Meeting
4. Report of Nominations Committee — Mrs. Cummings
5. Report of Audit Committee — Dr. Williamson
6. Report of Budget Committee — Mr. Simms
7. Report of Real Estate Committee —Dr. Youngblood
8. Report of Investment Committee—Mr. Steinhart
9. Review of Investment Performance — Mr. Young
10. Status Report of Member Enrollment and Reporting Improvement and Transformation Project — Mrs. Koontz
11. Report of Benefits Division — Mrs. Koontz
12. Discussion of Investment Policy Transition, Implementation and Compliance

13. Report of Executive Director — Mr. Dunlap

14. Comments by Board Members

15. Report of General Counsel on Litigation — Mr. Baker

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance contact Mary Godzik, (512) 397-6400 or T.D.D.(512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: June 20, 1996, 3:22 p.m.

TRD-9608894

## **The University of Texas Health Center at Tyler**

Thursday, July 11, 1996, 10:00 noon

Hwy 271 & Hwy 155, Room 116

Tyler, Texas 7510

Animal Research Committee

### **AGENDA**

Approval of Minutes

Chairman Report

Veterinarian Report

Old Business

New Business

Adjournment

Contact: Lea Alegre, ARC, UTHCT, P.O. Box 2003, Tyler, Texas 75710 (903) 877-7661

Filed: June 21, 1996, 1: p.m.

TRD-9609010

## **Woman's University Board of Regents, Texas**

Thursday, June 27, 1996 9:30 a.m.

1322 Oakland/Conference Tower, TWU, 14th floor

Denton, Texas 76204

### **AGENDA**

I. Consider approval of the minutes of the Committee meeting of March 14, 1996.

II. Receive an update on activities of the Office of Academic Affairs.

III. Consider recommending approval of the Athletics Program Philosophy

IV. Report of the Committee Chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (718) 898-3201.

Filed: June 19, 1996, 2:49

TRD-9608842

Thursday, June 27, 1996 9:00 a.m.

1322 Oakland/Clock Tower, 16th floor

Denton, Texas 76204

Committee on Institutional Advancement

### **AGENDA**

I. Consider approval of the minutes of the Committee meeting of March 14, 1996.

II. Report on alumnae relations, development, and public information activities of the Office of Institutional Advancement.

III. Report by the Committee Chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (718) 898-3201.

Filed: June 19, 1996, 2:49

TRD-9608840

Thursday, June 27, 1996 1:15 p.m.

1322 Oakland/Clock Tower, TWU, 14th Floor

Denton, Texas, 76204

Student Life Committee

### **AGENDA**

I. Consider approval of the minutes of the Committee meeting of March 14, 1996.

II. Report on Activities of the Office of Student Life including the Entry Access/One Card System, Student Center renovation, Hubbard Hall renovation, residential living program, orientation, and President's Ambassadors.

III. Consider recommending approval of an increase in the Student Services Fee, as authorized by Section 54.503 of VTCA Education Code, effective Fall Semester 1996 (Exhibit c).

IV. Consider recommending approval of the Student Service Fee Budget for Fiscal 1996-1997.

V. Report of the Committee Chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (718) 898-3201.

Filed: June 19, 1996, 2:49

TRD-9608839

Thursday, June 27, 1996 1:15 p.m.

1322 Oakland/Clock Tower, TWU, 16th Floor

Denton, Texas, 76204

Finance and Audit Committee

### **AGENDA**

Consider approval of the minutes of the Committee meeting of March 16, 1996; consider recommending approval of personnel additions and change, gifts and grants, contracts and agreements, allocation of federal funds, renewal, extension and acquisition of insurance; Certificates of Substantial Completion; revised motor vehicle registration and parking fee schedule; authorization for E.W. Petersen, Controller, S.S. Fry, Manager of Accounts Payable, C.W. Coleman, Manager of Grants Accounting, M.A. Demore, Accountant, and S.D. Roberson, Accountant, to approve local vouchers and vouchers submitted to the State Comptroller of Public Accounts for payment, and reaffirm authorization for C.R. Trevino, Accountant, to approve vouchers submitted to the State Comptroller of Public Accounts for payment; an increase in the General Use Fee; Fiscal 1997 Operating Budget; benefits distribution related to retained TWU self-insured health insurance funds; approval for the administration to

request proposals for financial management services to the University; receive third quarter Internal Audit Report and recommend the revised Internal Audit Charter for approval; and Report on and consideration concerning Texas Department of Transportation's U.S. Highway 380 right-of-way offer. Report of the Committee Chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (718) 898-3201.

Filed: June 19, 1996, 2:53

TRD-9608847

Friday, June 28, 1996 9:00 a.m.

1322 Oakland/Conference Tower, TWU, 16th Floor

Denton, Texas, 76204

Board of Regents

#### AGENDA

Executive Session; Consider approval of the minutes of the March 15, 1996 meeting; Consider approval of faculty for promotion and tenure: emerita faculty, the Athletics Program Philosophy; an increase in the Student Services Fee effective fall 1996; The Student Services Fee Budget for Fiscal 1996-97; personnel additions and changes, gifts and grants; contracts and agreements; federal funds; insurance; Certificates of Substantial Completion; a revised motor vehicle registration and parking fee effective Fall 1996; and/or reaffirmation of authorization for E.W. Petersen, Controller, S.S. Fry, Manager of Accounts Payable, C.W. Coleman, Manager of Grant Accounting, M.A. DeMore, Accountant, and S.D. Roberson, Accountant, to approve local vouchers and vouchers submitted to the State Controller of Public Accounts for payment, and reaffirm authorization for C.R. Trevino, Accountant, to approve vouchers submitted to the State Comptroller of Public Accounts for payment; an increase in the General Use Fee effective Fall 1996; the Fiscal 1997 Operating Budget; benefits distribution related to retained TWU self-insured health insurance funds. Approval for the administration to request proposals for financial management services to the University. Approval of the Internal Audit Charter. Report of the Committee Chairs. Report from the President.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (718) 898-3201.

Filed: June 19, 1996, 2:49

TRD-9608843

## Regional Meetings

### Meetings Filed June 19, 1996

Bexar Appraisal District, Board of Directors met 535 South Main Street, San Antonio, June 24, 1996 at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD 960882.

Burnet County Appraisal District, Appraisal Review Board met 223 South Pierce, Burnet, June 25, 26,27 and will meet July 9 and 10, 1996. The time of the meetings is 8:30 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD 9608857.

Central Texas Council of Governments, Board of Directors, met at 1200 S. Frio Street, Coleman, Texas, June 25, 1996 at 7:00 p.m. Information may be obtained from Barbara Metcalf, 1200 S. Frio Street, Coleman, Texas 76834, (915) 625-4167. TRD 9608838.

Central Texas Council of Governments, Audit Committee, met at 302 E. Central Avenue, Belton, June 27, 1996, at 9:30 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD 9608845.

Central Texas Council of Governments, Executive Committee met at 302 E. Central Avenue, Belton, June 27, 1996, 11:30 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD 9608844.

Central Texas Council of Governments, Executive Committee, met at 302 E. Central Avenue, Belton, June 27, 1996, 11:30 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD 9608837.

Coastal Bend Council of Governments, Executive Board, met at 2901 Leopard Street, Corpus Christi, June 28, 1996, 12:00 noon. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78569, (512) 883-55743. TRD 9608848.

Coastal Bend Council of Governments, Membership/Board, met at 2910 Leopard Street, Corpus Christi, June 28, 1996 at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD 9608849.

Community Action Committee of Victoria, Texas, Board of Directors Executive Committee, met 1501 N. DeLeon, Suite A, Victoria. No time specified. Information may be obtained from Lisa Wiest, 1501 N. DeLeon, Suite A., Victoria, Texas 77902-2142, (512) 578-2989. TRD 960885.

Dewitt County Appraisal District, Appraisal Review Board, met at 103 Bailey Street, Cuero, June 27, 1996 at 9:00 a.m. and will meet July 9 and July 12, 1996, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD 9608834.

Dewitt County Appraisal District, Appraisal Review Board, met at 103 Bailey Street, Cuero, June 27, 1996 at 9:00 a.m. and will meet July 9 and July 12, 1996 at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD 9608834.

Education Service Center, Region III, Board of Directors, met at 3902 Houston Highway, Victoria, June 27, 1996, at 11:30 a.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas, 77901, (512) 573-0731. TRD 9608819.

Education Service Center, Region III, Board of Directors, met at 1905 Leary Lane, Victoria, June 27, 1996, at 1:30 p.m. Information can be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD 9608820.

Education Service Center, Region XX, Board of Directors, met at 1314 Hines Avenue, San Antonio, June 25, 1996, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471. TRD 9608832.

Grayson Appraisal District, Appraisal Review Board will meet at 205 N. Travis Street, Sherman, July 8, 1996, at 8:15 a.m. Information may be obtained from Angie Keeton, 205 N. Travis, Sherman, Texas 75090 — (903) 893-9673. TRD 9608816.

Grayson Appraisal District, Appraisal Review Board will meet at 205 N. Travis, Sherman, July 9, 1996 at 8:15 a.m. Information may be

obtained from Angie Keeton, 205 N. Travis Street, Sherman, Texas 75090, (903) 893-8673. TRD 9608815.

Grayson Appraisal District, Appraisal Review Board, will meet at 205 N. Travis, Sherman, July 10, 1996 at 8:15 a.m. Information can be obtained from Angie Keeton, 205 N. Travis, Sherman, Texas 75090, (903) 893-9673. TRD 9608814.

Grayson Appraisal District, Appraisal Review Board, will meet at 205 N. Travis, Sherman, July 11, 1996 at 8:15 a.m. Information can be obtained from Angie Keeton, 205 N. Travis, Sherman, Texas 75090, (903) 893-9673. TRD 9608813.

Grayson Appraisal District, Appraisal Review Board, will meet at 205 N. Travis, Sherman, July 12, 1996 at 8:15 a.m. Information can be obtained from Angie Keeton, 205 N. Travis, Sherman, Texas 75090, (903) 893-9673. TRD 9608812.

Hamilton County Appraisal District, Board Meeting, met at 119 E. Henry, Hamilton, June 25, 1996 at 7:00 a.m. Information can be obtained from Doyle Roberts, 119 E. Henry, Hamilton, Texas 76531, (817) 386-8945. TRD 9608829.

Liberty County Central Appraisal District, Board of Directors, met at 315 Main Street, Liberty, on June 26, 1996, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty Texas, 77575, (409) 336-5722. TRD 9608835.

North Central Texas Council of Governments, Executive Board, met at Centerpoint two, 616 Six Flags Drive, 2nd Floor, Arlington, on June 27, 1996, at 12:45 p.m. Information can be obtained from Edwina J. Shires, NCTCOG, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRC 9608846.

Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on June 25, 1996 at 8:00 a.m. Information may be obtained from R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD 9608830.

Trinity River Authority of Texas, Board of Directors, met at 5300 S. Collins Street, Arlington, on June 26, 1996 at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD 9608831.

Upshur County Appraisal District, Appraisal Review Board, met at Warren & Trinity Streets, Gilmer, June 24, 1996. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 76544-0280, (903)843-3041. TRD 9608833.

West Central Texas Council of Governments, Executive Committee Meeting, met at 1025 East North Tenth Street, Abilene, June 26, 1996 at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD 9608856.

#### Meetings Filed June 20, 1996

Archer County Appraisal District, Appraisal Review Board, met at 101 South Center, Archer City, on June 15, 1996 at 9:00 a.m. Information may be obtained from Edward Trigg, P.O. Box 1141, Archer City, Texas, 76351-1141. TRD 960887.

Central Texas Council of Governments, Work Force Development Board of Central Texas, met at 321 N. Penelope Street, Belton, on June 27, 1996, at 10:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belto, Texas 76513 (817) 939-3771. TRD 9608889.

Dallas Central Appraisal District, Appraisal Review Board Meeting, will meet at 2949 N. Stemmons Freeway, 2nd Floor Community Room, Dallas, June 28, 1996 at 11:30 a.m. Information can be obtained from Rick Kuehler, 2949 N. Stemmons Freeway, Dallas, Texas 75247, (214) 631-0521. TRD 9608859.

Erath County Appraisal District, Appraisal Review Board, met at 1390 Harbin Drive, Stephenville, June 25, 26 and 27 at 9:00 a.m. Information may be obtained from Mitzi Meetins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD 9608901.

Golden Crescent Regional Planning Commission, Board of Directors, met 568 Big Bend Drive, Victoria, June 26, 1996, at 5:00 p.m. Information can be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD 9608861.

Gonzales County Appraisal District, Appraisal Review Board, met at 928 St. Paul, Gonzales, June 26, 1996, at 9:00. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879. TRD 9608884.

Lamb County Appraisal District, Appraisal Review Board, will meet at 331 LFD Drive, Littlefield, July 10, 1996, at 8:00 a.m. Information can be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD 9608874.

Leon County Central Appraisal District, Appraisal Review Board, met at 103 N. Commerce, Corner of Hwy 7 & 75, Gresham Building, Centerville, on June 27, 1996, at 9:00 a.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD 9608878.

Leon County Central Appraisal District, Board of Directors, met at 103 N. Commerce, Corner of Hwy 7 & 75, Gresham Building, Centerville, June 24, 1996 at 7:00 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, (902) 536-2252. TRD 9608877.

Liberty County Central Appraisal District, Board of Directors, met at 315 Main Street, Liberty, on June 26, 1996 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. 10016, Liberty, Texas 77575, (409) 336-5722. TRD 9608888.

Lower Rio Grande Valley Tech Prep Associate Degree Consortium, Board of Directors, met at University of Texas-Pan Am Administration Bldg., 1201 W. University Drive, Edinburg, on June 26, 1996 at 12:00 noon. Information may be obtained from Mrs. Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD 9608885.

Middle Rio Grande Development Council, Private Industry Council, met at Carrizo Springs Civic Center, 405 N. 7th Street, Carrizo Springs, June 26, 1996 at 1:45 p.m. Information may be obtained from Leodoro Martinez, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD 9608858.

Montague County Tax Appraisal District, Appraisal Review Board, met at 312 Rusk Street, Montague, June 26, 27, and 28, 1996, at 9:00 a.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD 9608905

Montague County Tax Appraisal District, Board of Directors, met at 312 Rusk Street, Montague, June 24, at 1:00 p.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD 9608904

Panhandle Regional Planning Commission, Board of Directors, met at 415 W. 8th Avenue, Amarillo, on June 27, 1996 at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381. TRD 9608879.

Pecan Valley MHMR Region, Board of Trustees, met at 104 Pirate Drive, Granbury, June 26, 1996 at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas, 76401, (817) 965-7805. TRD 9608860

Riceland Regional Mental Health Authority, Joint Hospital Committee of the Board, met at 4910 Airport, Rosenberg, on June 27, 1996 at 10:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 N. Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD. 9608915.

Riceland Regional Mental Health Authority, Board of Trustees, met at 4910 Airport, Rosenberg, on June 27, 1996 at 12:00 noon. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 N. Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD. 9608914.

San Jacinto River Authority, Board of Directors, met at 2301 North Millbend Drive, The Woodlands, June 26, 1996 at 12:30 p.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD 9608896.

Sharon Water Supply Corporation, Board of Director's Meeting, met at the Office of Sharon Water Supply Corporation, Route 5, Winnsboro, on June 24, 1996 at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD 9608909.

Texas Panhandle Mental Health Authority, Board of Trustees, TPMHA, met at 1501 S. Polk Street, Amarillo, June 27, 1996 at 10:30 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699. TRD 960886.

Wood County Appraisal District, Appraisal Review Board, met at 210 Clark Street (P.O. Box 518), Quitman, June 24 through June 28, 1996, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD 9608883.

#### Meetings Filed June 21, 1996

Ark-Tex Council of Governments (ATCOG), Board, met at 2025 South Collegiate Drive, Paris, June 27, 1996 at 5:30 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas, 75505, (903) 832-8636. TRD 9608988.

Atascosa County Appraisal District, Appraisal Review board, met at 4th and Avenue J, Poteet, June 27, 1996 at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD 9608960.

Atascosa County Appraisal District, Appraisal Review Board, met at 4th and Avenue J, Poteet, June 26, 1996 at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD 9608959.

Atascosa County Appraisal District, Board of Directors, met at 4th and Avenue J, Poteet, June 25, 1996 at 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD 9608958.

Austin Travis County MHMR Center, Board of Trustees, met at 1430 Collier Street, Board Room, Austin, June 27, 1996, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD 9609033.

Austin Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier Street, Austin, June 25, 1996 at noon. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas, 78704, (512) 447-4141. TRD 9608937.

Austin Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier Street, Austin, June 25, 1996, at noon. (Revised Agenda) Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78704, (512) 447-4141. TRD 9609003.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Work Session/Retreat, met at 1 Aquarena Springs Drive, San Marcos, June 24, 1996 at 8:30 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD 9608922.

Bastrop Central Appraisal District, Board of Directors, met at 1200 Cedar Street, Bastrop, on June 27, 1996 at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRC 9609013.

Bastrop Central Appraisal District, Appraisal Review Board, met at 1200 Cedar Street, Bastrop, on June 26, 1996 at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD 9608917.

Bastrop Central Appraisal District, Appraisal Review Board, met at 1200 Cedar Street, Bastrop, on June 27, 1996 at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD 9608916.

Central Appraisal District of Rockwall County, Appraisal Review Board, met at 106 N. San Jacinto, Rockwall, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 N. San Jacinto, Rockwall, Texas 75087, (512) 771-2034. TRD 9608926.

Central Plains MHMR & SA Center, Board of Trustees, met at 208 S. Columbia Street, Plainview, on June 27, 1996 at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072. TRD 9608950.

Community Action Committee of Victoria, Texas, Board of Directors and Finance Committee, met at 1501 N. DeLeon, Suite A, Victoria, on June 27, 1996, at 7:30 p.m. Information may be obtained from Lisa Wiest, 1501 N. DeLeon, Suite A, Victoria, Texas 77902-2142, (512) 578-2989. TRD 9609019.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue Conference Room "C", 1st Floor, Dallas, June 25, 1996 at 1:00 p.m. Information may be obtained from Ms. Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD 9608976.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue, Dallas, June 25, 1996 at 6:30 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD 9608977.

Dallas Area Rapid Transit, Audit Committee, met at 1401 Pacific Avenue, 1st Floor Conference Room, June 25, 1996 at 11:00 a.m.



Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD 9608975.

Dallas Central Appraisal District, Appraisal Review Board, will meet at 2949 N. Stemmons Freeway, 2nd Floor Community Room, Dallas, June 28, 1996 at 11:30 a.m. Information may be obtained from Rick Kuehler, 2949 N. Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD 9608859.

District Judge's Meeting, 36th, 156th, & 343rd District Courts, will meet at 400 W. Sinton Street, Sinton, June 28, 1996 at 10:00 a.m. Information may be obtained from Joel B. Johnson, P.O. Box 1303, Sinton, Texas, 78387, (512) 364-6200. TRD 9608938.

Education Service Center, Region XVI, Board of Directors will meet at Bank One Center, Empire Room, Amarillo Club, 7th & Tyler, Amarillo, June 28, 1996, at 12:00 for lunch, meeting at 1:00 p.m. Information may be obtained from Darrell L. Garrison, Ed.D., P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521. TRD 9609027.

Garza Central Appraisal District, Appraisal Review Board, met at 124 East Main Street, Post, on June 27, 1996 at 1:00 p.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD 9608954.

Golden Crescent Private Industry Council met at 2401 Houston Highway, Victoria, on June 26, 1996 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD 9608928.

Golden Crescent Quality Work Force Planning, Full Committee, met at Victoria College, 2200 E. Red River, Victoria, June 26, 1996 at 3:30 p.m. Information may be obtained from Carol Matula, 2200 E. Red River, Victoria, Texas 77901, (512) 572-6487. TRD 9608955.

Golden Crescent Regional Planning Commission, Board of Directors, met at 568 Big Bend Drive, Victoria, June 25, 1996 at 5:00 p.m. Information may be obtained from Rhonda Stastny, P.O. Box 2028, Victoria, Texas, 77902, (512) 578-1587. TRD 9608981.

Hansford County Appraisal District, Appraisal Review Board, met 709 W. 7th Street, Spearman, June 27, 1996 at 9:00 a.m. Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081-0519, (806) 659-5575. TRD 9609029.

Harris County Appraisal District, Appraisal Review Board, will meet at 2800 North Loop West, 8th floor, Houston, on June 28, 1996 at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD 9608927.

Heart of Texas Regional MHMR Center, Board of Trustees, met at 110 South 12th Street, Waco, on June 27, 1996 at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco Texas 76703, (817) 752-3451, #290. TRD 9608953.

Jack County Appraisal District, Appraisal Review Board, will meet at 210 N. Church Street, Jacksboro, on June 28, 1996 at 8:00 a.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD 9609002.

Jasper County Appraisal District, Board of Directors, met at 137 N. Main, Jasper, on June 27, 1996 at 1:00 p.m. Information may be obtained from David Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384-2544. TRD 9609034

Lamb County Appraisal District, Board of Directors, will meet at 331 LFD Drive, Littlefield, on July 11, 1996 at 6:00 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD 9609015.

Lampasas County Appraisal District, Appraisal Review Board, met at 109 East Fifth Street, Lampasas, June 25, 1996 at 8:30 a.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD 9608964.

MHMR Authority of Brazos Valley, Budget/Personnel Committee, met at 1504 S. Texas Avenue, Bryan, June 27, 1996 at 12:00 noon. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD 9608919.

MHMR Authority of Brazos Valley, Budget/Personnel Committee, met at 1504 S. Texas Avenue, Bryan, June 27, 1996 at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas, 77805, (409) 822-6467. TRD 9608919.

Middle Rio Grande Development Council, Joint Board of Directors, and Private Industry Council Meeting, met at the Civic Center, 407 North 7th Street, Carrizo Springs, on June 26, 1996 at 2:30 p.m. Information may be obtained from Leodoro Martinez, MRGDC, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD 9608999.

Middle Rio Grande Development Council, Board of Directors, met at the Civic Center, 407 North 7th Street, Carrizo Springs, June 26, 1996, at 1:00 p.m. Information may be obtained from Leodoro Martinez, MRGDC, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 879-3533. TRD 9608998.

Middle Rio Grande Development Council, met at the Civic Center, June 26, 1996 at 3:15 p.m. Information may be obtained from Leodoro Martinez, MRGDC, P.O. Box 119, Carrizo Springs, Texas 78834, (210) 876-3533. TRD 9609000.

Riceland Regional Mental Health Authority, Board of Trustees, met at 4910 Airport, Rosenberg, June 27, 1996 at 12:00 noon. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 N. Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD 9608943.

South Plains School Workers' Compensation Program, Board of Directors, met at 2551 South Loop 289, Lubbock, June 26, 1996 at 10:30 a.m. Information may be obtained from Russ Edwards, 1205 Lakeshore Drive, Marble Falls, Texas 78954, (210) 693-2508. TRD 9608942.

South Texas Private Industry Council, Inc., met at 901 Kennedy Street, Zapata, on June 27, 1996 at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (210) 722-0546. TRD 9609011.

South Texas Private Industry, Inc., met at 901 Kennedy Street, Zapata, June 27, 1996 at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (210) 722-0546.

Tarrant Appraisal District, Appraisal Review Board, met at 2329 Gravel Road, Fort Worth, July 1,2,3,8,9,10,11,12,13,15,16,17,18,19,20,22,23,24,25,26,29,30,31, 1996 at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD 9608939.

Upper Leon River Municipal Water District, Board of Directors, met at the General Office, Lake Proctor Dam off FM2861, Comanche, June 25, 1996 at 6:30 p.m. Information may be obtained from Gary

Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD 9609001.

# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## OFFICE OF THE ATTORNEY GENERAL

### Notice of Request for Proposals for Consulting Services

In accordance with the provisions of the Consulting Services Act, Texas Government Code, §2254.021, the Office of the Attorney General hereby gives notice that it is requesting proposals for consulting services for advice concerning the determination of which functions or activities, if any, currently performed by the OAG's Child Support Division can be more effectively and economically performed by the private sector. The Consultant selected to perform the services described in this RFP will develop a methodology and cost analysis model for the functions and activities currently performed by the Division. Second, using this cost analysis model, the Consultant will report to the OAG its determinations regarding the OAG's costs associated with operating the child support enforcement program as currently configured. Third, the Consultant will make recommendations for changes in the operations of the Child Support Division, if any, which will make the Division as cost effective as possible without a reduction in the quality of service provided to citizens through the IV-D program.

Copies of the request for proposals may be requested from: Mr. David Liebich, Purchasing Manager, Office of the Attorney General, 300 West 15th Street, 3rd Floor, Austin, Texas 78701. Copies of the RFP may be requested only by means of a letter addressed to Mr. Liebich and delivered by express mail or overnight delivery service to the above address. This method of requesting an RFP is the only one which shall be acceptable by the OAG. The request should include the name of the Requestor, the Address of the Requestor, the name of a contact person, and a telephone and fax number for that person. Requests for an RFP may be sent to the Attorney General beginning on the date that this notice is published in the *Texas Register*.

The closing date for the receipt of offers will be July 25, 1996.

The OAG will negotiate a contract with the vendor to be selected. A selection will be made based upon the factors or experience, the nature of the proposal, and cost.

Issued in Austin, Texas, on June 21, 1996.

9609004

Suzanne Marshall  
Assistant Attorney General  
Office of the Attorney General  
Filed: June 21, 1996

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### Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Section 382.096 of the Texas Health and Safety Code provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court: State of Texas v. Melza V. Kelley, Individually and Cherokee Waste & Resource Recovery, Inc., Cause Number 93-2343-B in the 124th Judicial District Court of Gregg County, Texas.

Nature of Defendant's Operations: Melza V. Kelley and Cherokee Waste and Resource Recovery, Inc. operated an unpermitted solid waste disposal site in Longview, Gregg County, Texas.

Proposed Agreed Judgment: The proposed Agreed Final Judgment contains provisions for injunctive relief and civil penalties as follows:

Injunctive Relief: The judgment contains numerous injunctive requirements, including requirements that Mr. Kelley and the company abide by various rules of the Texas Natural Resource Conservation Commission, including those provisions which prohibit unauthorized outdoor burning and prohibit violations of the Texas Clean Air Act.

Civil Penalties: The judgment requires the Defendants to pay an \$11,500.00 civil penalty to the State, and pay \$11,500.00 in attorney's fees to the Office of the Attorney General.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Rande K. Herrell, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, 512/463-2012, facsimile 512/320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

9608806

Suzanne Marshall  
Assistant Attorney General  
Office of the Attorney General  
Filed: June 19, 1996

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Articles 1.04, and 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04 and 1.05).

Issued in Austin, Texas, on June 17, 1996.

TRD-9608893

Leslie L. Pettijohn

Acting Commissioner

Office of Consumer Credit Commissioner

Filed: June 20, 1996



## Texas Commission for the Deaf and Hard of Hearing

### Request for Proposals

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) is requesting proposals from Health and Human Services Region IX for projects for the provision of services to eligible individuals who are deaf or hard of hearing. Services to be delivered by contract may include communication access services (CAS), information and referral services (I/R), and/or senior citizens program (SCP). These services are for the 1997 Fiscal Year which begins on September 1, 1996. Communication access services: interpreting services, sign language or oral, computer assisted realtime transcription (CART). Info & Referral: may include basic cost to access Internet, E-mail services.

Contact Person. Further information regarding the provision of the above-stated services and requests for application packets may be directed to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, (512) 451-8494.

Deadline for Submittal of Proposals. Deadline for the receipt of proposals in the offices of the Texas Commission for the Deaf and Hard of Hearing is 3:00 p.m., July 5, 1996. Proposals received after the established deadline cannot be considered for selection. Proposals are to be addressed to Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing, 4800 North

Lamar Boulevard Suite 310, Austin, Texas 78756. Faxed submission will not be accepted. Guidelines for Submitting Proposals. Each contractor will, as a minimum:

(A) be an agency, organization, or individual who is willing to provide services to persons who are deaf or hard of hearing in a specified geographical region;

(B) provide a location and description of the intended headquarters to be used for the coordination and delivery of services;

(C) provide an anticipated number of persons that will utilize the services

(D) be willing to cooperate with the Commission regarding its goals, standards, requirements, and recommendation;

(E) select the services most needed, and submit a fiscally conservative budget for the provision of these services to the Commission for review;

(F) possess the necessary skills, knowledge, and expertise for the planning, development, and implementation of needed services;

(G) state goals and outcomes of services funded by TCDHH;

(H) state the need for services;

(I) designate a service provider for the activity;

(J) utilize, to the highest degree possible, local community and other resources;

(K) maintain records of services provided and furnish the Commission with reports, as required, in the format prescribed by the Commission;

(L) establish and maintain a method for confidentiality of records and services relating to clients in accordance with any and all applicable state and federal rules, laws, and regulations;

(M) provide acknowledgment of TCDHH funding on publications, letterhead, materials, etc. (artwork will be supplied); and

(N) ensure involvement of deaf or hard of hearing individuals in the provision and oversight of services.

Proposal Evaluation Criteria. Proposals will be evaluated by the Commission on the following basis:

(A) submission of narrative and appropriate forms on or before the established deadline;

(B) all required areas are addressed;

(C) quality of the project plan;

(D) all operations of the project are within Commission authority;

(E) ability to provide a high-quality project aimed at meeting the individual needs of the client;

(F) letters of endorsement and/or cooperation especially from individuals and organizations in the consumer communities; and

(G) ability to implement project upon receiving notification from the Commission on award of contract.

Contract Award and Allocation Procedures. Final selection will be made by the Commission, using the previously mentioned evaluation procedures. Award will not necessarily be made to the contractor or applicant offering the lowest cost. Careful consideration will be given to the applicants' ability to provide quality direct services based on the Commission's evaluation criteria.

The Commission reserves the right to accept or reject any or all proposals submitted, as well as to refuse any or all renewals with previous contractors.

The Commission is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided only as a means of identifying the various elements which the Commission considers basic to the delivery of direct services. The Commission will base its choice on demonstrated competence, qualifications, and evidence of superior conformance to established criteria. This request does not commit the Commission to pay any costs incurred prior to execution of a contract.

The Commission will announce the contracts awards for FY 1997 at the Commission's open meeting in July, 1996. The contracted services shall begin on September 1, 1996.

Contracts include the possibility for amendments to permit additional funds, if such funds become available, or re-allocation of funds during the contract period if determined necessary by the Commission.

Funding will be determined by using a Commission-approved formula in the distribution of monies among selected and approved contractors by region.

Conditions for Termination of Contract. Failure to comply with contract requirements may result in the termination of the contract.

Issued in Austin, Texas, on June 24, 1996.

9609017

David W. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Filed: June 24, 1996

## **Texas Education Agency**

### **Request for Applications Concerning Reading and English Language Arts Center for Educator Development**

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-96-026 is authorized by Goals 2000: Educate America Act, Public Law 103-227.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from institutions of higher education, regional education service centers (ESCs), centers for professional development for teachers (formerly centers for professional development and technology), or entities with alternative certification programs, as appropriate for the project. Funds will be awarded to a consortium that minimally includes a teacher training program and an ESC or a school district to provide a statewide coordinated system of ongoing education and professional development for educators in Texas schools.

Description. The Reading and English Language Arts Center for Educator Development will be established to increase understanding of the Texas essential knowledge and skills that will compose the required curriculum that all districts must offer in Grades 1-12. The center will: provide educators with a deep and thorough knowledge of reading and English language arts as exemplified in the Texas essential knowledge and skills; increase educators' access to high quality teaching models, with a particular emphasis on beginning reading, for all students, including limited English proficient, bilingual, special education, and advanced learners; and establish a coordinated system of teacher education and professional development, planning, evaluation, and follow-up. The focus of the center will be in the areas of reading and English language arts at all grade levels with an emphasis on beginning reading instruction in Grades K-3.

Dates of Project. The Reading and English Language Arts Center for Educator Development will be implemented during the 1996-1997 school year. Applicants should plan for a starting date of no earlier than September 1, 1996, and an ending date of no later than August 31, 1997.

Project Amount. Funding will be provided for one project in an amount not to exceed \$1,297,533. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities, on general budget approval by the commissioner of education, and on appropriation of funds by Congress for Goals 2000. This project is funded 100% from Goals 2000 federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-96-026 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Sharon Jackson, Division of Curriculum and Professional Development, Texas Education Agency, (512) 305-8927.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Monday, August 5, 1996, to be considered.

Issued in Austin, Texas, on June 19, 1996.

TRD-9608804

Criss Cloudt

Associate Commissioner for Policy Planning and Research

Texas Education Agency

Filed: June 19, 1996



### Request for Applications Concerning Social Studies Center for Educator Development

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-96-027 is authorized by Goals 2000: Educate America Act, Public Law 103-227.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from institutions of higher education, regional education service centers (ESCs), centers for professional development for teachers (formerly centers for professional development and technology), or entities with alternative certification programs, as appropriate for the project. Funds will be awarded to a consortium that minimally includes a teacher training program and an ESC or a school district to provide a statewide coordinated system of ongoing education and professional development for educators in Texas schools.

Description. The Social Studies Center for Educator Development will be established to increase understanding of the Texas essential knowledge and skills that will compose the required curriculum that all districts must offer in Grades 1-12. The center will: provide educators with a deep and thorough knowledge of social studies as exemplified in the Texas essential knowledge and skills; increase educators' access to high quality teaching models; and establish a coordinated system of teacher education and professional development, planning, evaluation, and follow-up. The center funded through this RFA must address the issues and themes evident in the most recent draft of the social studies essential knowledge and skills.

Dates of Project. The Social Studies Center for Educator Development will be implemented during the 1996- 1997 school year. Applicants should plan for a starting date of no earlier than September 1, 1996, and an ending date of no later than August 31, 1997.

Project Amount. Funding will be provided for one project in an amount not to exceed \$1,297,533. Project funding in the second

year will be based on satisfactory progress of the first-year objectives and activities, on general budget approval by the commissioner of education, and on appropriation of funds by Congress for Goals 2000. This project is funded 100% from Goals 2000 federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-96-027 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Sharon Jackson, Division of Curriculum and Professional Development, Texas Education Agency, (512) 305-8927.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Monday, August 5, 1996, to be considered.

Issued in Austin, Texas, on June 19, 1996.

TRD-9608805

Criss Cloudt

Associate Commissioner for Policy Planning and Research

Texas Education Agency

Filed: June 19, 1996



## Texas Department of Health

### Correction of Errors

The Texas Department of Health adopted amendments to §§241.1, 241.2, 241.4–241.29. The rules appeared in the May 10, 1996, issue of the *Texas Register* (21 TexReg 4016).

On page 4022, §241.15(i), second line, the bracketed language “[the final container]” should have been deleted.

On page 4063, §241.2(q)(2), Figure 1, Table IA, under “Type of User,” the word certificate should be license and the word “certified” should be “licensed”.

The Texas Department of Health adopted new §289.202. The rule appeared in the May 10, 1996, issue of the *Texas Register* (21 TexReg 4030).

On page 4034, §289.202(k)(1)(B), the words “or registrant” should have been deleted to be consistent with other adopted language.

On page 4143, §289.202(ggg)(7), Figure 13, page 1 of 2 under “NUCLIDE,” the nuclides “I-126, I-129, I-131, I-133” should be removed in the figure (chart). The department agreed to remove these nuclides as a result of a comment, but inadvertently failed to remove them in the figure (chart).



Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table

below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location

listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and

experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or

property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on June 18, 1996.

TRD-9608898

Susan K. Steeg

General Counsel, Office of General Counsel

Texas Department of Health

Filed: June 20, 1996



## Texas Department of Housing and Community Affairs

### Request for Proposals-for Professional Consulting Services

**I. Summary.** The Texas Department of Housing and Community Affairs, through its Housing Resource Center (HRC), is issuing this Request for Proposals (RFP) for professional consulting services to establish criteria to conduct and complete a Statewide Analysis of Impediments (AI) to Fair Housing Choice in the non-entitlement areas defined as incorporated communities with less than 50,000 in population and counties of 200,000 or less in population, which are not participating or designated as eligible to participate in the entitlement portion of the federal Community Development Block Grant Program, and recommend appropriate actions which are within the State's capacity to perform to overcome the effects of any impediments identified through the AI. Services will also include developing an educational brochure regarding fair housing laws and instructions to State CDBG funded jurisdictions on conducting an analysis of impediments at the local level.

**II. Definitions.** The following words and terms, when used in this document, shall have the following meanings, unless the context clearly indicates otherwise:

Analysis of Impediments (AI) - A disclosure and review which includes actions or omissions in the State's public and private housing and real estate related market constituting violations, or potential violations, of the Fair Housing Act; attitudes prevalent in the State which are counter-productive to fair housing choice, integration or community resistance to the location of group homes for the disabled in residential neighborhoods; and, housing opportunities on the basis of race, color, religion, sex, disability, familial status, or national origin.

TDHCA - Texas Department of Housing and Community Affairs

RFP - Request for Proposals

**III. RFP Information.** Proposals must be received at TDHCA headquarters no later than, **4:30 p.m. on July 29, 1996.** Please call Donna Schielack, Purchasing, at (512) 475-3988 to request an RFP package. For additional information contact John Garvin, at (512) 475-9038.

Issued in Austin, Texas, on June 24, 1996.

TRD-9609030

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 24, 1996



## Texas Department of Human Services

### Correction of Errors

The Texas Department of Human Services proposed amendments and new §§48.9801, 48.9802, 48.9805, 48.9806, 48.9809. The rules appeared in the May 24, 1996, issue of the *Texas Register* (21 TexReg 4580).

On page 4022, §241.15(i), second line, the bracketed language "[the final container]" should have been deleted.

On page 4580, §48.9801(a)(3) was left out of the publication and should read: "(3) Reporting period. The provider must prepare the cost report to reflect the activities of the provider during his fiscal year. Cost reports may be required for other periods at the discretion of the department.

The Texas Department of Human Services proposed amendments to §79.403 and §79.404. The rules appeared in the June 14, 1996, issue of the *Texas Register* (21 TexReg 5434).

The amendment added new subsection (e) and it was not printed in bold. It should appear as follows:

"(e) Child and Adult Care Food Program (CACFP) Advisory Committee.

(1) Legal basis. The committee's legal base is HRC §22.009

(2) Responsibilities. The committee advises the Board and DHS on policies, procedures, and management issues of the child and adult care food program.

(3) Structure.

(A) The committee has 11 regular members, with a representative balance of family day home sponsors and providers, directors of adult day care centers and child day care centers, concerned citizens, and parents and relatives who participate in the CACFP.

(B) Representatives of state agencies and federal agencies with an interest or role in the committee's field of work serve as ex-officio members. Ex-officio members serve until they are replaced by the agency they represent.

(C) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.

(4) Abolishment date. The abolishment date is September 1, 2000.

The Texas Department of Human Services proposed amendments to §79.403 §79.404. The rules appeared in the June 5435, 1996, issue of the *Texas Register* (21 TexReg 5435).

On page 5436, the amendment added new subsection (e) and it was printed in bold. It should read as follows:

**(e) Child and Adult Care Food Program (CACFP) Advisory Committee.**

**(1) Legal basis. The committee's legal base is HRC §22.009.**

**(2) Responsibilities. The committee advises the Board and DHS on policies, procedures, and management issues of the child and adult care food program.**

**(3) Structure**

**(A) The committee has 11 regular members, with a representative balance of family day home sponsors and providers, directors of adult day care centers and child day care centers, concerned citizens, and parents and relatives who participate in the CACFP.**

**(B) Representatives of state agencies and federal agencies with an interest or role in the committee's field of work serve as ex-officio members. Ex-officio members serve until they are replaced by the agency they represent.**

**(C) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.**

**(4) Abolishment date. The abolishment date is September 1, 2000."**

## **TEXAS DEPARTMENT OF INSURANCE**

Notice of Application by Mercy Health Plans of Missouri, Inc., Laredo, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of MERCY HEALTH PLANS OF MISSOURI, INC., Laredo Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, 6th Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to MERCY HEALTH PLANS OF MISSOURI, INC. without a public hearing.

Issued in Austin, Texas, on June 21, 1996.

9609008

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: June 21, 1996



### **Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers**

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code, Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Harris Methodist Texas Health Plan, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

Issued in Austin, Texas, on June 21, 1996.

9609005

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: June 21, 1996



### **Insurer Services**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Brokers National Life Assurance Company, a foreign life, accident and health company. The home office is in Sherwood, Arkansas.

Application for admission in Texas for Residential Guaranty Co., a foreign fire and casualty company. The home office is in Phoenix, Arizona.

Application for a name change in Texas for Montfort Insurance Company, a domestic fire and casualty company. The proposed new name is Risk Management Assurance Corporation. The home office is in Irving, Texas.

Application for a name reservation in Texas for Spectera Dental, Inc., a domestic health maintenance organization. The home office is in Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608817  
Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: June 18, 1996



The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Diamond State Insurance Company, a foreign fire and casualty company. The home office is in Indianapolis, Indiana.

Application for a name change in Texas for Skandia America Reinsurance Corporation, a foreign fire and casualty company. The proposed new name is Odyssey Reinsurance Corporation. The home office is in Wilmington, Delaware.

Application for a name change in Texas for Skandia America Reinsurance Corporation, a foreign fire and casualty company. The proposed new name is Millennium Reinsurance Corporation. The home office is in Wilmington, Delaware.

Application for a name change and conversion to a mutual company in Texas for Tank Owners Insurance Company of Texas, A Risk Retention Group. The proposed new name is Tank Owners Mutual Insurance Company. The home office is in Fort Worth, Texas.

Application for a name change in Texas for First Assurance Company of Texas, assumed name in Texas for First Life Assurance Company, a foreign life, accident and health company. The proposed new name is Medical Savings Insurance Company. The home office is in Oklahoma City, Oklahoma.

Application by General Security Insurance Company, a foreign fire and casualty company, to drop its assumed name in Texas, General Security Insurance Company (MD) A Stock Casualty Company. The home office is in Rockville, Maryland.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on June 21, 1996.

TRD—9609007  
Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: June 21, 1996



#### Notices

A public hearing originally scheduled before the Commissioner of Insurance for July 11, 1996 at 9:00 a.m. under Docket Number 2232, has been rescheduled to July 25, 1996 at 9:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing the adoption of amendments to the revised Texas Private Passenger Automobile Statistical Plan ("revised Plan").

Issued in Austin, Texas, on June 21, 1996.

TRD—9609006  
Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: June 21, 1996



The Commissioner of Insurance, or his designee, will consider approval of a rate filing request outside the promulgated flexibility band filed by Connecticut Indemnity Company pursuant to Texas Insurance, Code Annotated, Article 5.101, §3(g). They are proposing rates of -30% for ambulances and -50% for fire departments for the Emergency Services Insurance Program for commercial automobile.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on June 21, 1996.

TRD—9609018  
Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: June 21, 1996



#### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Southwest Reinsure, Inc., a foreign third party administrator. The home office is Albuquerque, New Mexico.

Application for admission to Texas of Transaction Application Group, Inc., a foreign third party administrator. The home office is Lincoln, Nebraska.

Application for admission to Texas of Preferred Care, Inc., a foreign third party administrator. The home office is Treveose, Pennsylvania.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608791

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: June 18, 1996



## Texas Natural Resource Conservation Commission

### Consultant Proposal Request Withdrawal

In the April 2, 1996, issue of the *Texas Register* (21 TexReg 2851), the Texas Natural Resource Conservation Commission (TNRCC) announced that it would be issuing a "Request for Proposals (RFP): Business Process Retooling and Other Services Related to the Selection of a Vendor of Emissions Inventory Information Management Systems" to qualified companies/organizations to provide consulting services relating to business process reengineering/improvement and evaluation and selection of emissions inventory information management systems. Eight companies submitted proposals in response to the announcement and the TNRCC staff has completed evaluation of all proposals. However, due to changing circumstances in the information resources environment of the agency that may ultimately affect the scope of services that are required, it has been decided that no contract will be let for any of the consulting services described in the original RFP. The TNRCC withdraws the RFP and has notified all of the companies that submitted proposals that the RFP has been withdrawn.

The withdrawal of the RFP in no way reflects on the quality of the proposals submitted or on the companies that participated in the selection process. Any requests for additional information should be directed to: Mike Fishburn, Emissions Inventory (MC-164), Re: BPR/Information Management Project, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, telefax: (512) 239-1515, phone: (512) 239-1934.

Issued in Austin, Texas, on June 14, 1996.

9608920

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission



### Correction of Errors

The Texas Natural Resource Conservation Commission adopted new §3.1 and §3.2. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4697).

On page 4704, §3.2, the definition of Enforcement order should be listed as a separate paragraph.

The agency also adopted new §§5.1–5.14. the rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4705).

On page 4712, §5.12, in the last sentence, the phrase "with the consent of the commission" should be omitted.

The agency also adopted new §§10.1–10.9. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4712).

On page 4719, §10.6, the section should read, "The chairman or a commissioner may sign written orders to show actions taken by the commission at a meeting if he or she did not vote against the actions reflected in the orders."

The agency also adopted new §§50.31, 50.33, 50.35, 50.37, 50.39, and 50.41. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4741).

On page 4742, §50.31(c)(11), the word "petition" should be "petitions."

On page 4741, §50.31(b)(5), the cite should be to the Texas Water Code.

On page 4742, §50.31(c)(2), the cite to Chapter 122 of this title should also include (relating to Federal Operating Permits). In addition, (c)(8) should include Chapter 330 of this title (relating to Municipal Solid Waste) and (c)(9) should include Chapter 332 of this title (relating to Composting).

The agency also adopted new §§55.21, 55.23, 55.25, 55.27, 55.29, and 55.31. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4749).

On page 4750, §55.21(d), end of the second sentence ("The time period shall be"), the following phrase should be added, "no less than 30 days after the first publication of the notice of application, except that the time period shall be:"

On page 4750, §55.21(d)(10) and (11), the first word should be "no" rather than "not."

On page 4750, §55.21(d)(8), the word "permit" should be added after the phrase "wastewater discharge."

The agency also adopted new §§70.1–70.11. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4759).

On page 4760, §70.4(7), the word "mean" should be replaced with the word "median."

On page 4761, §70.10(c), second sentence, the reference to Chapter 10 should say "relating to" rather than "concerning."

The agency also adopted new §§80.1, 80.3, 80.5, 80.7, 80.9, 80.11, 80.13, 80.15, 80.17, 80.19, 80.21, 80.23, 80.25, 80.27, 80.29, 80.31, and 80.33. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4770).

On page 4770, §80.3(b), second sentence, the words "and evidentiary" should be deleted.

On page 4772, §80.29(a), first sentence, the words "these deadlines" should be replaced with the words "those pleadings."

The agency also adopted new §§80.101, 80.103, 80.105, 80.107, 80.109, 80.111, 80.113, 80.115, 80.117, 80.119, 80.125, 80.127, 80.129, 80.131, 80.133, 80.135, and 80.137. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4772).

On page 4774, §80.127(d)(1), first sentence, the measurement should have read 8–1/2 by 11 inches, rather than 8 by 11 inches.

On page 4775, §80.133, the second sentence should read, “The judge may prescribe reasonable time limits, and may require or accept written briefs in lieu of oral arguments, **and may set a schedule for the submission of written briefs.**”

On page 4775, §80.137(a), the second sentence should read, “the motion shall state the specific issues upon which the summary disposition is sought, **and** the specific grounds justifying the summary disposition.” In addition, the third sentence should read, “...opposing parties, the motion, any supporting affidavits, and any other relevant documentary...,” with a comma added between the words “motion” and “any supporting.”

The agency also adopted new §§80.251, 80.253, 80.255, 80.257, 80.259, 80.261, 80.263, 80.265, 80.267, 80.269, 80.271, 80.273, 80.275, 80.277, and 80.279. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4778).

On page 4779, §80.265, second sentence, the word “final” should be deleted.

The agency also adopted new and amendments §§340.31, 340.33, 340.35, 340.37, 340.39, 340.41, 340.43, 340.45, 340.49, 340.51, and 340.53. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4810).

On page 4811, §340.45, second sentence, the words “, the applicant” should be deleted.

The agency also adopted new §§70.101–70.109. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4762).

On page 4763, §770.109, third sentence, the reference should be corrected to read, “§80.5 of this title (relating to Referral to SOAH).”

The agency also adopted new §§80.251, 80.253, 80.255, 80.257, 80.259, 80.261, 80.263, 80.265, 80.267, 80.269, 80.271, 80.273, 80.275, 80.277, and 80.279. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4778).

On page 4779, §80.267(b), third sentence, the word “be” should be added between “to” and “required.”

On page 4779, §80.277(c), the reference should read “subsection (a) or (b) of this section...”

The agency also adopted new §§86.11–86.18. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4787).

On age 4787, §86.15(b), the first full sentence should read, “After reviewing any judge’s recommendations...”

On page 4788, §86.18(a), second sentence, the word “therefore” should be corrected to add the final “e.”

The agency also adopted new §§86.130–86.132. The rules appeared in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4789).

On page 4789, §86.130, first sentence, the word “be” should be deleted from between “not” and “more.”

In the proposed version of §340.33, as published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2183), which was listed as being adopted without changes in the May 28 issue, paragraph (3) should be corrected to read, “any person who possesses a Class A or Class B underground storage tank (UST) installer’s license...”

#### Applications for Waste Disposal Permits

Notices of Applications for waste disposal permits issued during the period of June 14th thru June 21, 1996.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement “I/we request a public hearing;” a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant’s operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

ANCHOR STONE COMPANY, 3101 South Yale Avenue, Tulsa, Oklahoma 74135; a limestone quarry and rock crushing operation; the plant site is adjacent to the south side of Grindstone Road, approximately 1.5 miles south of the intersection of Interstate Highway 20 and Millsap Road and west of the City of Weatherford in Parker County, Texas; new; 03884.

CITY OF BANDERA, P.O. Box 896, Bandera, Texas 78003; the wastewater treatment plant is approximately 0.5 mile northeast of the intersection of State Highway 16 and Farm-to-Market Road 689 in the City of Bandera in Bandera County, Texas; renewal; 10121-01.

CANUTILLO INDEPENDENT SCHOOL DISTRICT, 7273 Bosque Road, Canutillo, Texas 79835; the wastewater treatment facilities and the disposal site are between Hemley Road and Chicken Farm Road, and Doniphan Drive and Kiely Road, approximately 0.5 mile southeast of the City of Vinton and 2.0 miles north of the City of Canutillo in El Paso County, Texas; new; 11561-03.

CZECH CATHOLIC HOME FOR THE AGED, Route 3, Box 40, El Campo, Texas 77437; the wastewater treatment plant is approximately 1,000 feet northwest of the intersection of U.S. Highway 59 and Farm-to-Market 441 (adjacent to Farm-to-Market Road 441) in Wharton County, Texas; renewal; 10935-01.

EMERALD POINT MARINA/PARTNERS, LTD., 11940 Jollyville, #S110, Austin, Texas 78759; the wastewater treatment facilities and the disposal site are at 5973 Hi-Line Road, on the west side of



Hi-Line Road, off of Hudson Bend Road approximately 1/4 mile north-northwest of the intersection of Ranch-to-Market Road 620 and Hudson Bend Road in Travis County, Texas; new; 13825-01.

THE FALLS MUNICIPAL UTILITY DISTRICT, 1001 North Falls Drive, New Ulm, Texas 78950; the wastewater treatment facilities are approximately 1.75 miles east-northeast of the intersection of Farm-to-Market Road 109 and Zimmerscheidt Road and approximately 9.5 miles north of the City of Columbus in Colorado County, Texas; renewal; 13018-01.

HAN-MAN INVESTMENTS, 9308 North Highway 87, Orange, Texas 77632; the wastewater treatment facilities are approximately 0.5 mile northwest of the intersection of State Highway 87 and Farm-to-Market Road 3247, 0.5 mile north of the intersection of Farm-to-Market Road 3247 and Farm-to-Market Road 1130 in Orange County, Texas; renewal; 13072-01.

MATAGORDA WASTE DISPOSAL AND WATER SUPPLY CORPORATION, P.O. Box 196, Matagorda, Texas 77457-0196; the wastewater treatment facilities are in Matagorda, on the northwest corner of the intersection of Matagorda and Barnard Street, approximately 0.5 mile southeast of the intersection of Farm-to-Market Road 2031 and State Highway 60 in Matagorda County, Texas; renewal; 10913-01.

MILLSAP INDEPENDENT SCHOOL DISTRICT, 305 Pine Street, Millsap, Texas 76066; the wastewater treatment facilities are approximately 1,700 feet northeast of the intersection of Farm-to-Market Road 3028 and Farm-to-Market Road 113 in Parker County, Texas; renewal; 13537-01.

MCMULLEN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1, P.O. Box 4, Tilden, Texas 78072-0004; the Tilden Wastewater Treatment Facilities are adjacent to the west side of State Highway 16 and immediately south of the intersection of State Highway 16 and Farm-to-Market Road 72 in McMullen County, Texas; renewal; 13543-01.

PHILLIPS PETROLEUM COMPANY, P.O. Box 271, Borger, Texas 79008-0271; a rail car maintenance and testing center. the plant site is west of Spur Road 246 and south of A.T. & S.F. Railway at 919 Florida Street in the City of Borger in Hutchinson County, Texas; renewal; 02326

TENNESSEE PIPELINE CONSTRUCTION COMPANY, P.O. Box 250, Sinton, Texas 78387; the wastewater treatment facilities are at the Cuddihy Airfield, approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 665 and Farm-to-Market Road 763, west of the City of Corpus Christi in Nueces County, Texas; renewal; 11205-01.

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752; a facility to dispose low-level radioactive waste; the plant site is at Mile Marker 112.5, Interstate Highway 10, east of the City of Sierra Blanca in Hudspeth County, Texas; new; 03899.

TRINITY RIVER AUTHORITY, P.O. Box 240, Arlington, Texas 76004-0240; the Denton Creek Regional Wastewater Treatment Plant is located at 1687 U.S. Highway 377 north of Roanoke, approximately 1.5 miles north-northeast of the intersection of State Highway 114 and U.S. Highway 377 in Denton County, Texas; amendment; 13457-01.

UNITED STATES AIR FORCE, 300 Reese Boulevard, Suite 3, Reese Air Force Base, Texas 79489; to authorize the closure and

post-closure care of industrial and hazardous wastes and a compliance plan (Proposed Compliance Plan Number CP-50302) to authorize ground-water monitoring and corrective action; the waste formerly managed were contaminated waste water and treatment plant effluent. No further waste management activities are being authorized; the applicant is currently closing Reese Air Force Base which primarily functioned as a training base and aircraft maintenance facility which managed hazardous wastes; the facility is located on 2,469 acres at 300 Reese Boulevard, on FM 2255, just north of Texas Highway 114 and six miles west of the City of Lubbock, Lubbock County, Texas; new; HW-50302.

Issued in Austin, Texas, on June 21, 1996.

9608978

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: June 21, 1996



### Notice of Opportunity to Comment on Permitting Actions

For the week ending June 21, 1996

The following applications will be signed by the Executive Director in accordance with 30 TAC 263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 10 days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Commissioners who will determine whether or not to send the matter to the State Office of Administrative Hearings. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-133 to revise the sludge provisions of the existing permit in accordance with 30 TAC Chapter 312. The current permit authorizes a discharge of treated domestic wastewater effluent at an interim volume not to

exceed an average flow of 1,500,000 gallons per day and a final volume not to exceed an average flow of 3,000,000 gallons per day, which will remain the same. The wastewater treatment facilities are approximately 400 feet south of the intersection of Gears Road and Spears Road on the south side of Greens Bayou in Harris County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-121 to revise the sludge provisions of the existing permit in accordance with 30 TAC Chapter 312. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 450,000 gallons per day, which will remain the same. The wastewater treatment facilities are approximately 2,800 feet east of the intersection of Westheimer Road (Farm-to-Market Road 1093) and State Highway 6 and 3,200 feet north of Westheimer Road in the City of Houston in Harris County, Texas.

GRIFFIN CORPORATION for a minor amendment to Permit Number 01260 in order to add monitoring requirements for total dissolved solids and total sulfates; replace 48-hour acute biomonitoring requirements with seven-day chronic biomonitoring requirements; and remove 24-hour acute biomonitoring requirements. The permit currently authorizes a discharge of process wastewater, utility water and stormwater at a volume not to exceed an average dry weather flow of 100,000 gallons per day, which will remain the same. The applicant operates a plant manufacturing cupric hydroxide for use as an agricultural fungicide. The plant site is at 12701 Alameda Road in the City of Houston in Harris County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-111 to revise the sludge provisions of the existing permit in accordance with 30 TAC Chapter 312. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 13,340,000 gallons per day, which will remain the same. The wastewater treatment facilities are approximately 1,700 feet north of Bellaire Boulevard and 3,400 feet west of Roark Road in the City of Houston in Harris County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-10 to revise the sludge provisions of the existing permit in accordance with 30 TAC Chapter 312. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2,000,000 gallons per day, which will remain the same. The wastewater treatment facilities are at 9030 Clinton Drive in the City of Houston in Harris County, Texas.

CITY OF WESLACO for a minor amendment to Permit Number 10619-03 in order to revise the biomonitoring requirements. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 3,000,000 gallons per day, which will remain the same. The wastewater treatment facilities are northeast of the City of Weslaco approximately 4,000 feet east of State Highway 88 and approximately 4,000 feet north of Pike Boulevard in Hidalgo County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-119 to revise the sludge provisions of the existing permit in accordance with 30 TAC Chapter 312. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 23,100,000 gallons per day, which will remain the same.

The wastewater treatment facilities are on the southeast side of U.S. Highway 59 South and 1/2 mile south of Bissonnet Road, between Whitechapel Lane and Keegans Bayou in Harris County, Texas.

Consideration of a Proposed Order Approving the Petition of Five Electors for Appointment of a Temporary Director for Austin Municipal Utility District Number 1. The Petitioners request that the Commission appoint William P. Resch to replace Linda Cheney who resigned at the April board meeting. (TNRCC Internal Control Number 051496-D02; Cindy Cartwright).

Signature of a Proposed Order Approving the Application by Harris County Municipal Utility District Number 172 for Approval of \$3,095,000 Unlimited Tax Bond Issue, First Issue, 7.17% Net Effective Interest Rate, Series 1996. Applicant requests that the Commission Approve a \$3,095,000 unlimited Tax Bond Issue to fund water, wastewater & drainage facilities. (TNRCC Internal Control Number 063095-D03, Robert Cummins)

Application Number 23-851G by Starr County Water Control & Improvement District Number 2, M.U.D. for a Texas Water Code Section 11.122 Water Use Permit Application. Amendment to Certificate Number 23-851 to combine 57.50 acre-feet of Class A irrigation water rights owned by applicant under Certificate Number 23-273 into Certificate Number 23-851 and to change the purpose of use, point of diversion and place of use. (Kellye Rila 239-4612)

Application Number 23-851H by Starr County Water Control & Improvement District Number 2, M.U.D. for a Texas Water Code Section 11.122 Water Use Permit Application. Amendment to Certificate Number 23-851 to combine 230 acre-feet of Class A irrigation water rights owned by applicant under Certificate Number 23-274 into Certificate Number 23-851 and to change the purpose of use, point of diversion and place of use. (Kellye Rila 239-4612)

Application Number 23-851I by Starr County Water Control & Improvement District Number 2, M.U.D. for a Texas Water Code Section 11.122 Water Use Permit Application. Amendment to Certificate Number 23-851 to sever 175 acre-feet of Class B irrigation water rights owned by applicant under Certificate Number 23-672 and to combine them into Certificate Number 23-851 and to change the purpose of use, point of diversion and place of use. (Kellye Rila 239-4612)

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-75 to revise the sludge provisions of the existing permit in accordance with 30 TAC Chapter 312. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 6,140,000 gallons per day, which will remain the same. The wastewater treatment facilities are approximately 1/2 mile west of Interstate Highway 45 and 1/4 mile south of the intersection of Sageville Drive and South Belt in southeast Houston in Harris County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-09 to add the latest 30 TAC Chapter 312 sludge provisions. The proposed amendment would also authorize an increase in the daily average peak flow of treated domestic wastewater from 12,150 gallons per minute to 19,631 gallons per minute. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 7,000,000 gallons per day, which will remain the

same. The wastewater treatment facilities are at 9600 Martin Luther King Boulevard adjacent to Sims Bayou in Harris County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-116 in order to revise sludge provisions in accordance with 30 TAC Chapter 312. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 18,000,000 gallons per day, which will remain the same. The Upper Brays Wastewater Treatment Facilities are on the northeast corner of the intersection of Old Westheimer Road and Alief-Clodine Road in the City of Houston in Harris County, Texas.

CITY OF HOUSTON, Department of Public Works and Engineering for a minor amendment to Permit Number 10495-126 in order to revise sludge provisions in accordance with 30 TAC Chapter 312. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2,000,000 gallons per day, which will remain the same. The Willowbrook Regional Wastewater Treatment Facilities are approximately 2.0 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960 and approximately 1,320 feet north of the intersection of State Highway 249 and Mills Road in Harris County, Texas.

APPLICATION NUMBER 23-802C BY HIDALGO COUNTY IRRIGATION DISTRICT NUMBER 16 FOR AN AMENDMENT TO CERTIFICATE OF ADJUDICATION NUMBER 23-714, PURSUANT TO TWC 11.122. Applicant seeks authorization to change the purpose of use of 100 acre-feet of Class "A" irrigation right to mining use in the applicant's service area in Hidalgo County, Texas. Certificate Number 23-802 currently authorizes the diversion and use, with Class "A" priority, not to exceed 30,898.85 acre-feet of water per annum from the Rio Grande to irrigate a total of 13,579.54 acres of land located in TWC Tract Number H-267, Court Number 540 in Hidalgo County, Texas. Owner is also authorized to divert and use, with municipal priority, not to exceed 100 acre-feet of water per annum from the Rio Grande for domestic purposes, and to divert and use, also with municipal priority, not to exceed 1500 acre-feet of water per annum from the Rio Grande for municipal purposes, both of which to be used in the service area of the certificate owner. In addition, certificate owner is authorized to divert and use not to exceed 100 acre-feet of water per annum from the Rio Grande for mining purposes. (Renee Tuggle).

Issued in Austin, Texas, on June 21, 1996.

9608979

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: June 21, 1996



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions June 21, 1996

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Health and Safety Code, the Texas Clean Air Act (the Act), Chapter 382, §382.096. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed

orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 28, 1996**. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 28, 1996**. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-3434. The TNRCC Staff Attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC **in writing**.

(1) COMPANY: Strouhal Tire Recapping, Inc.; DOCKET NUMBER: 96-0597-AIR-E; ACCOUNT NUMBER: BG-0718-S; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: Tire Retreading Plant; RULE VIOLATED: 30 TAC §116.110 and the Act, §382.0518(a) and §382.085(b), by failing to obtain a permit or qualify for a standard exemption; PENALTY: \$525; STAFF ATTORNEY: None; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(2) COMPANY: North American Pipe, Inc.; DOCKET NUMBER: 96-0598-AIR-E; ACCOUNT NUMBER: TA-2943-L; LOCATION: Saginaw, Tarrant County; TYPE OF FACILITY: Metal Pipe Coating Plant; RULE VIOLATED: 30 TAC §116.110 and the Act, §382.0418(a) and §382.085(b), by failing to obtain a permit or qualify for a standard exemption; PENALTY: \$350; STAFF ATTORNEY: None assigned; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(3) COMPANY: Wheel Finance, Inc.; DOCKET NUMBER: 96-0852-AIR-E; ACCOUNT NUMBER: DB-4166-H; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: Used Car Sales; RULE VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Act, §382.085(b), by offering for sale vehicles with missing or inoperable required emission control systems or devices; PENALTY: \$0; STAFF ATTORNEY: None assigned; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(4) COMPANY: Woodforest Auto Sales; DOCKET NUMBER: 96-0668-AIR-E; ACCOUNT NUMBER: HG-9149-K; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: Car Dealership; RULE VIOLATED: 30 TAC §114.1(c)(2) and the Act, §382.085(b), by offering for sale a vehicle with inoperable emission control devices; PENALTY: \$0; STAFF ATTORNEY: None assigned; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(5) COMPANY: Terry's Motors; DOCKET NUMBER: 96-0851-AIR-E; ACCOUNT NUMBER: TA-3137-Q; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: Used Car Dealership; RULE VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Act,

§382.085(b), by offering for sale a vehicle with missing or inoperable required emission control systems or devices; PENALTY: \$250; STAFF ATTORNEY: None assigned; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(6) COMPANY: S and W Auto Sales; DOCKET NUMBER: 96-0135-AIR-E; ACCOUNT NUMBER: TA-3054-V; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: Used Car Dealership; RULE VIOLATED: 30 TAC §114.1(c)(1) and the Act, §382.085(b), by offering for sale a vehicle with missing control systems or devices; PENALTY: \$0; STAFF ATTORNEY: None assigned; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

Issued in Austin, Texas, on June 21, 1996.

9608997

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: June 21, 1996



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions June 24, 1996

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Health and Safety Code, the Texas Clean Air Act (the Act), Chapter 382, §382.096. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 27, 1996**. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 27, 1996**. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-3434. The TNRCC Staff Attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) COMPANY: Black Marlin Pipe Line Company; DOCKET NUMBER: 96-0990-AIR-E; ACCOUNT NUMBER: GB-0156-K; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §101.20(1) and §116.115; 40 CFR §60.8, 60.482-10(f)(2); the Act, §382.085(b); and TNRCC Permit Number 17182 by failing to conduct stack sampling on the flare within 180 days of initial startup,

in violation of Special Provision 9C of TNRCC Permit Number 17182, and until December 15, 1994, by exceeding the maximum allowable volatile organic compound (VOC) emission rate for Glycol Dehydration Units A, B, and C, in violation of Special Provision 1 of TNRCC Permit Number 17182; PENALTY: \$78,500; STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423; (713) 767-3500.

(2) COMPANY: Champion International Corporation; DOCKET NUMBER: 96-1075-AIR-E; ACCOUNT NUMBER: HG-0674-D; LOCATION: Sheldon, Harris County, Texas; TYPE OF FACILITY: paper mill; RULE VIOLATED: 30 TAC §115.121(a)(2) and §116.116(a); the Act, §382.085(b); and TNRCC Permit Exemption Number XC-190A by failing to control emissions from the Tall Oil Plant as self-reported to the TNRCC on August 26, 1993; by increasing the production rate without modifying the permit exemption for TNRCC Exemption Number XC-190A for the TMP Plant as self-reported to the TNRCC on August 26, 1993; and by failing to represent VOC emissions in the application for TNRCC Permit Exemption Number XC-190A for the TMP Plant as self-reported to the TNRCC on August 26, 1993; PENALTY: \$470,400. \$235,200 of this penalty will be deferred upon the timely completion of a Supplemental Environmental Project, which involves contributions to the Houston-Galveston Area Emission Reduction Credit Organization; STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423; (713) 767-3500.

(3) COMPANY: David Friesenhahn; DOCKET NUMBER: 96-0443-MSW-E; ACCOUNT NUMBER: MSW Unauthorized Site Number 451130003; LOCATION: Von Ormy, Bexar County, Texas; TYPE OF FACILITY: municipal solid waste facility; RULE VIOLATED: 30 TAC §330.4 by operating an unauthorized municipal solid waste disposal site without having first obtained a permit or registration; 30 TAC §330.4(f) by placing unauthorized waste in a land reclamation project; 30 TAC §330.5 regarding General Prohibitions, and 30 TAC §111.101 regarding Control of Air Pollution from Visible Emissions and Particulate Matter, by the open burning of waste; PENALTY: \$20,160; STAFF ATTORNEY: Kathy Keils, (512) 239-0678; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(4) COMPANY: Heat Energy Advanced Technology; DOCKET NUMBER: 96-0105-AIR-E; ACCOUNT NUMBER: DB-0934-I; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: waste solvent recycling plant; RULE VIOLATED: This Order amends a prior Order issued by the TNRCC. The Order modifies the technical requirements of the prior Order. It does not allege additional violations, and no additional penalty is required to be paid by Heat Energy Advanced Technology; STAFF ATTORNEY: Paul C. Sarahan (512) 239-3422; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas, 76116, (817) 732-5531.

(5) COMPANY: Houston Lighting and Power Company; DOCKET NUMBER: 96-1074-AIR-E; ACCOUNT NUMBER: FG-0020-V; LOCATION: Thompsons, Fort Bend County, Texas; TYPE OF FACILITY: steam electric generating station; RULE VIOLATED: 30 TAC §101.20(1) and the Act, §382.085(b) by violating 40 CFR Part 60 (New Source Performance Standards), Subpart Db, allegedly violating 40 CFR §60.13 and 40 CFR §60.48b(b) by failing to install, calibrate, maintain, and operate a continuous emission monitoring

system to measure and record the in-stack concentration of nitrogen oxides (NO<sub>x</sub>) from the W. A. Parish auxiliary steam boiler, and to record the output of the system. This is also a violation of 30 TAC §116.115(a) by violating Special Provisions 2 and 7 of TNRCC Permit R-18851; 40 CFR §60.48b(f) by failing to obtain NO<sub>x</sub> emission data for the auxiliary boiler using a standby monitoring system during the failure of the NO<sub>x</sub> monitoring system; 40 CFR §60.49b(i) by failing to submit auxiliary boiler quarterly reports containing the information required under 40 CFR §60.49b(g) for the last three quarters of 1992 and the first three quarters of 1993; 30 TAC §116.115 and the Act, §382.085(b) by exceeding the permit allowable opacity rate of 20% by emitting 30.6% opacity from one of the W. A. Parish Unit 8 pugmill scrubber vents on September 20, 1993, in violation of Special Provision 2 of TNRCC Permit Number R-7707; and 30 TAC §116.115 and §116.116 and the Act, §382.085(b) by exceeding the annual particulate matter (PM<sub>10</sub>) emission limit of 1.07 tons per year for Emission Point Number (EPN) 1 for the Phase II Units 7 and 8 coal car unloading operation in 1992, and by exceeding the annual throughput allowable for coal of 4,292,701 tons per year. HL&P unloaded 414,200 tons of coal in excess of the amount represented in the permit application, which resulted in calculated PM<sub>10</sub> emissions of 0.10 tons over the permitted allowable amount. The annual PM<sub>10</sub> emission limit for EPN 1 was based on representations in HL&P's application for TNRCC Permit Number 7706a that annual coal throughput would not exceed 4,292,701 tons per year; PENALTY: \$12,550. \$6,225 of this penalty will be deferred upon the timely completion of a Supplemental Environmental Project, which involves contributions to the Houston-Galveston Area Emission Reduction Credit Organization; STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423; (713) 767-3500.

(6) COMPANY: International Grating, Inc.; DOCKET NUMBER: 96-1038-AIR-E; ACCOUNT NUMBER: HG-3509-V; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: safety grate production plant; RULE VIOLATED: 30 TAC §116.110 and the Act, §382.0518 and §382.085(b) by failing to obtain a permit or meet the requirements of a standard exemption of the operation of a safety grate manufacturing plant. Specifically, the Company exceeded the acetone and resin usage allowed by TNRCC Standard Exemption Number 113; PENALTY: \$3,950; STAFF ATTORNEY: Linda Sorrells, (512) 239-3408; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423; (713) 767-3500.

(7) COMPANY: Kessler Industries, Inc.; DOCKET NUMBER: 96-1037-AIR-E; ACCOUNT NUMBER: EE-0047-R; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: metal furniture manufacturing plant; RULE VIOLATED: 30 TAC §115.421(a)(2) and the Act, §382.085(b) by using surface coatings that emit greater than 5.1 lbs./gallon of solids for a period of approximately two years from March 1993 to March 1995; 30 TAC §101.10 and the Act, §382.085(b) by failing to submit an initial emissions inventory; and 30 TAC §116.110 and the Act, §382.0518(a) and §382.085(b) by constructing a paint manufacturing facility, a paint storage and handling facility, ten new paint spray booths, and modifying eight existing booths, without first having obtained a permit or qualified for a standard exemption; PENALTY: \$33,425; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: 7500 Viscount Blvd., Suite 147; El Paso, Texas 79925; (915) 778-9634.

(8) COMPANY: Leggett & Platt Texas Fibers Division; DOCKET NUMBER: 96-0989-AIR-E; ACCOUNT NUMBER: WD-0023-P; Permit Number 8380; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: flexible foam manufacturing plant; RULE VIOLATED: 30 TAC §116.115, and the Act, §382.085(b) and Special Provision 1 of TNRCC Permit Number 8380 by: pouring foam before 9:00 a.m. while methyl chloroform was being used on four occasions—January 15 and 19, March 23 and April 6, 1993; and exceeding the maximum allowable emission rate (129.8 tons/year) for methylene chloride by 9.2 tons during the 12-month period from July 1992 through June 1993; PENALTY: \$16,500; STAFF ATTORNEY: Linda Sorrells, (512) 239-3408; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500; Waco, Texas 76710-7807; (817) 751-0335.

(9) COMPANY: Olin Corporation; DOCKET NUMBER: 96-0988-AIR-E; ACCOUNT NUMBER: JE-0073-N; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: sulfuric acid production plant; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(b) by discharging one or more air contaminants or combinations thereof, in such concentration and of such duration as tended to be injurious to or to adversely affect human health or welfare, or as to interfere with the normal use and enjoyment of property; PENALTY: \$6,000; STAFF ATTORNEY: Thomas Corwin, (512) 239-5915; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110; Beaumont, Texas 77703-1830; (409) 898-3838.

(10) COMPANY: Sun City Redi-Mix, Inc.; DOCKET NUMBER: 96-0069-AIR-E; ACCOUNT NUMBER: 92-0634-H; LOCATION: Highway 180 East, El Paso County, Texas; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: 30 TAC §116.115(a), and the Act, §382.085(b) by failing to comply with paragraph (b) of TNRCC Standard Exemption Number 73 which states that "...All in-plant haul roads and stockpiles are sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions; and failing to comply with paragraph (c) of TNRCC Standard Exemption Number 73 which states that "... Water sprays are located at all belt transfer points, shaker screens, and inlet and outlet of all crushers and used as necessary to achieve maximum control of dust emissions."; PENALTY: \$0; STAFF ATTORNEY: Linda Sorrells, (512) 239-3408; REGIONAL OFFICE: 7500 Viscount Boulevard., Suite 147; El Paso, Texas 79925; (915) 778-9634.

Issued in Austin, Texas, on June 24, 1996.

9609024

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: June 24, 1996



### Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017, and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning new Chapter 39 and revisions to Chapter 305.

This proposal is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules

of the commission. As part of Phase II, the commission recently adopted new procedural rules Chapters 1, 3, 5, 10, 20, 40, 50, 55, 70, 80, and 86, and amendments to Chapter 340 (see the May 28, 1996, issue of the *Texas Register* (21 TexReg 4689)).

Proposed new Chapter 39 is intended to replace several sections of Chapter 305, Subchapter E. The commission's adoption of the Phase II rules noted in the prior paragraph included the repeal of several sections of Chapter 305, Subchapter E. The commission now proposes the repeal of the remaining sections of Chapter 305, Subchapter E. Accordingly, if the proposals are ultimately adopted, Chapter 305, Subchapter E will be repealed in its entirety.

A public hearing on the proposal will be held July 18, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96124-039-AD. Comments must be received by 5:00 p.m., July 18, 1996 regarding Chapter 39 and July 25, 1996 for Chapter 305. For further information, please contact Richard O'Connell, (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on June 14, 1996.

9608684

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission



## Texas Parks and Wildlife Department

### Correction of Errors

The Texas Parks and Wildlife Department adopted repeals to §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36, and 65.37. The rules appeared in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5306).

Due to an oversight on the agency's part, there were inadvertent errors in the submission.

The errors were as follows:

Adopted new §65.26, concerning Managed Lands Deer Permits, should have been adopted with changes. The last sentence of subsection (c) should have been deleted so that the subsection reads as follows: "The number of MLD permits distributed to a hunter shall be at the discretion of the landowner."

Adopted repeals to §§65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, and 65.66 appeared in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5308).

In adopted new §65.42(b)(4)(B)(iii), the language reading, "During the first 23 days of the season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land." should read as follows: "During the first 23 days of the season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land."

In adopted new §65.42(b)(4)(G)(iii), the language reading, "During the first two days of the season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land." should read, "During the first two days of the season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land."

Adopted new §65.42(b)(5) should read as follows: On all tracts of land for which both MLD buck permits and MLD antlerless permits have been issued for the harvest of white-tailed deer, and on properties for which the WMP specifies a harvest quota of zero for either sex:

(1) a hunter may use any appropriate white-tailed deer tag on his or her hunting license, regardless of the bag limit in the county, provided the hunter also possesses an appropriate MLD permit for each deer taken; and

(2) the landowner may allow the hunting of antlerless white-tailed deer for 14 consecutive days beginning the day immediately following the last day of the general open season.

In adopted new §65.42(c), the sentence, "In Grayson County, the bag limit is three white-tailed deer, no more than one buck and no more than two antlerless." should have been the final sentence of the subsection.

### Texas Parks and Wildlife

Notice of Availability and Request for Comments on a Proposed Natural Resource Plan

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Natural Resource Conservation Commission (TNRCC), Texas General Land Office (TGLO) and the United States Department of the Interior (DOI) (hereafter, Natural Resource Trustees).

ACTION: Notice of availability of a proposed emergent estuarine wetland primary restoration plan and of a (30) day period for public comment on the plan.

SUMMARY: Notice is hereby given that a phased restoration strategy is being proposed to compensate for injuries to estuarine natural resources resulting from the October 8, 1994 crude oil spill into Gum Hollow Creek, Nueces Bay and Corpus Christi Bay from a pipeline owned and operated by Koch Pipeline Co., L.P. (successor in interest to Koch Gathering Systems, Inc.). The proposed

phased strategy will consist of four physically related but temporally distinct restoration activities that will address primary restoration of estuarine emergent wetland vegetation, primary restoration of estuarine upper saltmarsh habitats, compensatory restoration of estuarine habitats and primary and compensatory restoration of freshwater habitats. Primary restoration is any action or actions that will return injured natural resources and the services they provide to baseline status. Compensatory restoration is any action or actions that will compensate for interim losses of natural resources and their services from the date of the incident until recovery.

The proposed restoration plan describing the overall phased approach and providing specifics for the first restoration phase for estuarine resources, entitled "Draft Natural Resource Restoration Plan / Environmental Analysis, Koch Oil Spill, Corpus Christi, Texas", is hereby made available for public review and comment for a period of 30 days. Separate restoration plans detailing proposed primary restoration of estuarine upper saltmarsh habitat, compensatory restoration for estuarine injuries and restoration for injuries to freshwater natural resources will be made available for public review and comment when these plans are developed.

The proposed restoration plan calls for Koch Pipeline Co., L.P. (KPC) to undertake an emergent estuarine wetland vegetation restoration project which provides for the primary restoration of wetland habitat and services destroyed or lost as a result of the 8 October 1994 discharge of crude oil from a KPC pipeline. The preferred alternative will provide approximately one acre of intertidal smooth cordgrass (*Spartina alterniflora*) wetlands adjacent to the rookery islands located north of Indian Point in eastern Nueces Bay. Implementation of the proposed restoration plan will provide valuable nursery habitat for aquatic organisms and will help reduce erosional losses of the islands. KPC will be responsible for all project costs, including the costs of obtaining necessary permits. The Natural Resource Trustees will oversee project construction and post-construction monitoring of project performance.

The opportunity for public review and comment on the proposed restoration plan announced in this notice is required under the Oil Pollution Act 33 U.S.C. 2706(c)(5), and parallels provisions of 15 CFR 990.14 (d) and 990.55 of the federal Natural Resource Damage Assessment regulations.

**DATES:** Comments must be submitted in writing on or before July 29, 1996 to Don Pitts of the Texas Parks and Wildlife Department, Resource Protection Division, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4732. All written comments will be considered by the Natural Resource Trustees in finalizing the proposed restoration plan.

**SUPPLEMENTARY INFORMATION:** On Saturday, October 8, 1994, a crude oil discharge from a KPC pipeline was discovered in Gum Hollow Creek, San Patricio County, Texas. A total of approximately 2151 bbls (90,342 gallons) of oil were discharged from the pipeline. Heavy rains caused the water level in Gum Hollow Creek to rise. Portions of the discharged oil exited Gum Hollow Creek and eventually entered Nueces Bay and Corpus Christi Bay. Excluding open water areas, approximately 27 acres of habitat were oiled to varying degrees during the incident.

Numerous natural resources were affected as a result of the discharge. A kill affecting almost 15,000 fish and aquatic macroinvertebrates was observed in the lower Gum Hollow Creek and delta area. Significant portions of existing freshwater and estuarine habitats were impacted

by the discharge. Services provided by these resources such as erosion control, food, shelter and nursery value were also impaired or lost.

The incident is subject to the authority of the Federal Water Pollution Control Act (33 U.S.C. §§1321 et seq.), OPA (33 U.S.C. §§2701 et seq.) and the Oil Spill Prevention and Response Act (Texas Natural Resource Code §§40.001 et seq.). The TPWD, TNRCC, TGLO and DOI are designated co-Trustees of the natural resources injured by the discharge from the KPC pipeline pursuant to OPA, the Federal Water Pollution Control Act and subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.600-300.615).

The Natural Resource Trustees have determined that estuarine emergent wetlands subject to their trust authority under these Acts were exposed to crude oil as a result of the discharge. The quantity and concentration of the material discharged was sufficient to result in the destruction or loss of estuarine emergent wetlands. Consequently the Trustees are seeking the primary restoration of estuarine emergent wetlands described in the proposed restoration plan.

Interested members of the public are invited to request a copy of the proposed restoration plan from Don Pitts of the Texas Parks and Wildlife Department, Resource Protection Division, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4732.

Issued in Austin, Texas, on June 24, 1996.

9609021

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: June 24, 1996



## **PUBLIC UTILITY COMMISSION OF TEXAS**

### **Electric Utility Service Quality Report**

The staff of the Public Utility Commission of Texas has developed a draft form intended for use by electric utilities in submitting quarterly service quality reports in accordance with Substantive Rule §23.11. Interested parties may file six copies of comments concerning the form in the Commission's Central Records under Project Number 15013 on or before July 26, 1996. The staff will distribute the draft form to each electric utility in the state; however, copies are also available in Central Records, 7800 Shoal Creek Boulevard Austin, Texas 78757. For more information on this project, please contact Mel Eckhoff at (512) 458-0120

Issued in Austin, Texas, on June 18, 1996.

TRD-9608747

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 18, 1996



### **Notice of Intent to File Pursuant to Substantive Rule §23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer- spe-

cific PLEXAR-Custom Service for Highland Park ISD in University Park, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Highland Park ISD in University Park, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16047.

**The Application.** Southwestern Bell Telephone Company is requesting approval for an options only addition to the existing PLEXAR-Custom service for Highland Park ISD. The geographic service market for this specific service is the University Park, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608672

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 17, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. SUBST. R. 23.27 for approval of customer-specific PLEXAR-Custom Service for Alvin Community College in Alvin, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Alvin Community College in Alvin, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16046.

**The Application.** Southwestern Bell Telephone Company is requesting approval for a 30 station addition to the existing PLEXAR-Custom service for Alvin Community College. The geographic service market for this specific service is the Alvin, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608671

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 17, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for City of Waco in Waco, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for City of Waco in

Waco, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16044.

**The Application.** Southwestern Bell Telephone Company is requesting approval for a 68 station addition to the existing PLEXAR-Custom service for City of Waco. The geographic service market for this specific service is the Waco, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608670

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 17, 1996

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**Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on June 27, 1996, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for billing and collection services with MCI Telecommunications Company.

**Tariff Title and Number:** Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with MCI Telecommunications Company Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16064.

**The Application:** Southwestern Bell Telephone Company seeks approval of a customer-specific billing and collection services contract with MCI Telecommunications Company. The services pursuant to the customer-specific contract will be offered anywhere within the state of Texas where MCI Telecommunications Company provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 20, 1996.

9608900

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 20, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Canutillo ISD in Canutillo, Texas.



Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Canutillo ISD in Canutillo, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16054.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Canutillo ISD. The geographic service market for this specific service is the Canutillo, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 20, 1996.

9608899

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 20, 1996



#### Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on or after June 10, 1996, pursuant to Public Utility Commission Substantive Rule 23.28 for approval to offer promotional rates.

Tariff Title and Number: Application of Lufkin-Conroe Telephone Exchange, Inc. for Promotional Rate Offering Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 15982.

The Application: Lufkin-Conroe Telephone Exchange, Inc. proposes to waive the nonrecurring service order charges for existing customers who wish to add one or more local exchange access lines to their service during a 60 day promotional period. The service order charges which will be waived are as follows: Primary Service Order, \$14.65; Central Office Access, \$8.65; and Premises Trip, \$6.80.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608669

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 17, 1996

#### Request For Proposal/Invitation to Bid

Notice of Request for Proposals/Invitation to Bid. Pursuant to the Public Utility Regulatory Act of 1995, Texas Civil Statutes Annotated, Article 1446c-0 (Supplement 1996), (hereafter PURA 95), the Public Utility Commission of Texas (PUC), the State agency charged with the regulation of the rates and services of public utilities

(electric and telephone, not municipal corporations), announces a Request for Proposals (RFP) or Invitation to Bid to provide mediations services with regard to pending telecommunications issues. This notice is being issued in anticipation of approval by the General Services Commission of the PUC's retention of mediation services. Once such approval is received, copies of the RFP or Invitation will be available.

The PURA 95, as passed by the 74th Texas Legislature, became effective on September 1, 1995, and enacted a major revision to the regulation of telecommunications industry in Texas. It required the Commission to undertake specific steps in order to foster the continuing development and emergence of a competitive and advanced telecommunications environment and infrastructure. On February 8, 1996, President Bill Clinton signed new federal legislation, known as the Federal Telecommunications Act of 1996 (the FTA), that enacted a sweeping change of the telecommunications industry. The FTA amended the Communications Act of 1934 and directed the Federal Communications Commission (FCC) to engage in a massive rewriting of federal rules applicable to local exchange telecommunications carriers.

Both PURA 95 and the FTA have as primary goals the introduction of competition to the local exchange telephone market. However, because of the number and complexity of issues associated with that goal, particularly as a result of harmonizing the requirements of both PURA 95 and the FTA, the Commission believes it is appropriate to investigate the possibility of a comprehensive settlement of pending issues by all persons with a justiciable interest in that goal. The Commission believes that a comprehensive resolution may be the most efficient, expedient, and equitable process by which to achieve the goal of local exchange telephone competition in Texas.

The PUC seeks the assistance of an experienced mediator. The role of the mediator will be to promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement upon the parties. Where the mediator believes that any issues in dispute between the parties is not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the mediator may propose advising the Commission of an issue in dispute, having the parties present to the Commission their positions on the issue, and receiving advice and guidance from the Commission.

Copies of the RFP will be available upon approval by the General Services Commission of this RFP or Invitation.

Contact Person. Persons interested in offering mediation services should contact Carole Vogel, Director, Office of Regulatory Affairs, Public Utility Commission of Texas, 7800 Shoal Creek Blvd., Suite 283N, Austin, Texas, 78757 or (512) 458-0297 for a complete copy of the RFP.

Closing Date. Audit Proposals should be received by the PUC no later than 5:00 p.m., July 10, 1996. The period for performance is estimated to be August 8, 1996, to November 30, 1996.

Award Procedures. Selection of the mediator will be based on demonstrated competence, experience, and knowledge, in mediation,

the level of minority participation, and cost. All proposals received shall be subject to evaluation by a committee of qualified PUC personnel to select the proposal which most clearly meets the requirements of the RFP. The Office of Regulatory Affairs will make a recommendation to the PUC Commissioners who will make the final selection. Proposals will not be considered confidential and the top three proposals chosen by the Office of Regulatory Affairs will be subject to public comment. Mediators may be asked to make an oral presentation of their proposal prior to the Commission's final selection.

The PUC reserves the right to accept or reject any or all proposals submitted. The PUC is under no legal or other requirement to execute a resulting contract on the basis of this notice or distribution of the RFP. Neither this notice nor the RFP commit the PUC to pay for any costs incurred.

Issued in Austin, Texas, on June 17, 1996.

TRD-9608675

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: June 17, 1996

### Texas Racing Commission

#### Notice of Application Period

The Texas Racing Commission announces that the Commission will accept applications for a Class 2 horse racetrack license for Hidalgo County. Under the Texas Racing Commission rules, the Commission may designate an application period of not more than 60 days in which applications for a racetrack license may be filed. On June 10, 1996, the Texas Racing Commission's Horse Racing Section established two new 60-day application periods. The first designated application period begins at 8:00 a.m., August 1, 1996, and ends at 5:00 p.m., September 29, 1996. The second designated application period begins at 8:00 a.m., September 30, 1996, and ends at 5:00 p.m., November 27, 1996. For more information, contact Jean Cook, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699, FAX (512) 833-6907, or 8505 Cross Park Dr., #110, Austin, Texas 78754-4594.

Issued in Austin, Texas, on June 19, 1996.

9608836

Paula Cochran Carter

Texas Racing Commission

General Counsel

Filed: June 19, 1996



### Texas Turnpike Authority

#### Request for Qualifications

The following request for qualifications ("RFQ") for providing professional turnpike civil engineering turnpike construction management services is filed under the provisions of Texas Civil Statutes, Article 6251-11c.

The Texas Turnpike Authority (the "TTA") is soliciting statements of interest and qualifications for professional civil engineering turnpike construction management firms to manage, monitor and provide

quality assurance services for the President George Bush Turnpike, the Addison Airport Toll Tunnel, and expansion of the Dallas North Tollway.

Proposed fees or budgets shall not be submitted with any initial response or other communication of a firm. A qualification packet is being prepared for the civil consulting engineering construction management services and will be issued to each firm filing a written notice that it desires to respond and which requests a copy of the packet which will be available for distribution after July 5, 1996.

The TTA will not accept requests for nor issue the civil construction management engineering services qualification packet after July 26, 1996. No RFQ responses will be accepted by the TTA after 5:00 p.m. CDST, August 16, 1996.

When a firm responds by filing its qualifications, it shall include a statement regarding the affirmative action program of the firm and shall include a statement that the responding civil construction management engineering firm has familiarized itself with the TTA Historically Underutilized Business Policy and will confirm with that policy.

Qualifications filed will be reviewed by a staff civil construction management engineering selection committee to identify those most qualified and experienced respondents who will be interviewed by the committee for capabilities best suited to specific assignments. The final civil construction management engineering firm selection will be made following completion of the interviews and negotiation of a satisfactory fee.

Questions concerning this assignment shall be directed to Pete Davis, Director of Engineering, Texas Turnpike Authority, (214) 522-6200.

Issued in Austin, Texas, on June 21, 1996.

TRD—9609022

Pete Davis, P.E.

Director of Engineering

Texas Turnpike Authority

Filed: June 24, 1996



### Texas Workforce Commission

#### Notice of Available Funds

Notice of Available Funds for 1996-1997 School Year for New or Established Apprenticeship Training Programs Not Currently Receiving Funding from the Texas Workforce Commission (TWC) under the Texas Education Code (TEC), Chapter 133.

Filing Authority. The notice of available funds for apprenticeship training programs is authorized under the TEC, Chapter 133.

Eligible Applicants. The Texas Workforce Commission (TWC) is requesting preliminary contact-hour estimates from public school districts, regional education service centers, and public postsecondary institutions for related instruction (apprentice) classes for new or established apprenticeship training programs not currently receiving funding from TWC under the TEC, Chapter 133.

Description. The amount of \$65,000 in general revenue funds is available to fund programs or new occupations within a program that did not receive funding prior to the current biennium under the TEC, Chapter 133. The purpose of the funds is to provide

classroom instruction for related instruction (apprentice) classes of apprenticeship training programs authorized by the TEC, Chapter 133.

**Qualifications for Funding.** To qualify for funding: A) each apprenticeship training program or new occupation within a program must be certified and registered by the Bureau of Apprenticeship and Training (BAT), U. S. Department of Labor, no later than August 1, 1996; B) each apprenticeship training program must be sponsored by a public school district, a regional education service center, or a public postsecondary institution under a contract between the district, service center, or institution and an apprenticeship committee; C) each apprentice must be registered with the BAT in Texas on or before September 1, 1996; D) each apprentice must be a full-time paid employee in the private sector in Texas; E) the number of related-instruction hours per class must be certified by the BAT as verified in the program standards of the apprenticeship program; and F) the class must start in September 1996 and conduct its fourth class meeting no later than October 5, 1996.

**Dates of Program.** Each class may not start before September 1, 1996, and must end on or before August 31, 1997.

**Planning Allocation of Funds.** The statewide total number of estimated contact hours of new or established apprenticeship training programs that did not receive funding prior to the current biennium under the TEC, Chapter 133, that are submitted to TWC will be divided into the amount of funds available (\$65,000) to determine the preliminary contact-hour rate, not to exceed \$3.50 per contact hour. Planning allocations are made to eligible applicants by TWC based on the number of estimated contact hours submitted to TWC multiplied by the preliminary contact-hour rate.

**Use of Funds.** Funds are used to supplement the cost of instructor salaries, instructional supplies, instructional equipment, other operating expenses, and administration. No more than 15% may be used by the eligible applicants for administrative purposes, such as supervisory and/or secretarial salaries, office supplies, or travel.

**Requesting the Forms To Submit Preliminary Estimated Contact Hours.** A package of information explaining the process for submitting preliminary estimated contact hours and the process for submitting an application may be obtained by contacting Apprenticeship Training, Texas Workforce Commission, 101 East 15th Street, Austin Texas 78778, (512) 305-9228 or (512) 475-3428. If requesting the package in person, information may be obtained in Room 440 or Room 460 at 1717 West 6th Street in Austin, Texas.

**Further Information.** For clarifying information, contact Ms. Toni M. Dean, Program Director, Apprenticeship Training, Texas Workforce Commission, (512) 305-9228 or (512) 475-3428.

**Deadline for Receipt of Preliminary Contact-Hour Estimates.** Preliminary contact-hour estimates of the apprenticeship training programs must be received in the Apprenticeship Training Unit, Texas Workforce Commission by 5:00 p.m. (Central Daylight Time), Thursday, July 25, 1996 to be considered for funding.

Issued in Austin, Texas, on June 18, 1996.

TRD-9608738  
J. Ferris Duhon  
Legal Counsel  
Texas Workforce Commission  
Filed: June 18, 1996



## Program Year 1996 Performance Standards and 5% Incentive Grant System

As authorized by the Texas Labor Code, §301.061 and §302.021, and pursuant to state Job Training Partnership Act (JTPA) Rules 40 TAC §805.161, §805.162, and §805.163, the Texas Workforce Commission (the Commission) provides notice of the Program Year 1996 Performance Standards and 5% Incentive Grant System for Title IIA and IIC JTPA programs. As a general State policy, PY97 5% incentive funds will be used to award incentive grants to SDAs based on PY96 performance against DOL, Federally mandated, and State standards established for JTPA Title IIA and Title IIC programs.

To ensure the development of JTPA programs as performance-driven systems, the State's 5% incentive funds will be primarily awarded to Service Delivery Areas (SDAs) on the basis of their exceeding minimum performance levels of the following, Department of Labor (DOL) performance standards: (1) Adult follow-up employment rate, (2) Adult follow-up weekly earnings, (3) Adult welfare follow-up employment rate, (4) Adult welfare follow-up weekly earnings, (5) Youth entered employment rate, (6) Youth employability enhancement rate; Federally mandated standards: (1) Model Out-of-School Youth programs having a demonstrated record of success and serving more than the minimum required percentage of out-of-school youth, (2) Adult Employer-Assisted Benefits Rate; and State performance standards: (1) Adult High Wage Placements, and (2) Serving Job Opportunities and Basic Skills Training (JOBS) participants. The minimum performance levels are:

For DOL performance standards, the minimum performance level shall be the adjusted 50th percentile of national performance. SDAs with actual performance between the adjusted 50th percentile of national performance and the lower confidence interval inclusive shall be considered to have met but not exceeded the standard. (See Table 1).

For the Adult Employer-Assisted Benefits Rate, the minimum performance level is 57% adjusted to account for availability of health benefits in the area based on variations in area industry composition. (See Table 2).

For the Model Out-of-School Youth Incentive, incentive funds will be awarded for implementing model programs that achieve demonstrated success in terms of participant outcomes applying the Youth/Work strategy described herein. Seventy percent (70%) demonstrated success in the following outcomes must be verified through the CMS: (1) Entered Employment. (2) Returned to School. (3) Remained in School. (4) Completed Major Level of Education. (5) Entered Non-Title II Training - "Certificate" or Apprenticeship Program.

To be eligible for incentive funds an SDA must meet at least four of the following requirements, and the requirement to serve 51% out-of-school youth: (1) Each youth must participate in a work based activity, such as work experience, limited internship, job shadowing or mentoring with adult supervision in the work place. (2) Basic skills instruction must include some curriculum based on the DOL Secretary's Commission on Achieving Necessary Skills (SCANS) competencies or foundations. (3) Programs must allow for attainment of a high school diploma or GED by participants. (4) Occupational skills training must be provided. (5) Supportive services must be provided if need is verified by the Individual Service Strategy (ISS), and may be provided through an agreement with another agency. (6) Programs must attempt to instill a sense of community responsibility in youth.

An SDA's Model Out-of-School Youth program activities may be subject to verification by the Commission. Positive terminations must be verified through the Client Management System (CMS). For that purpose, each participant in a Model Out-of-School Youth program must be identified by "MY" in the Participant Coding Sheet activity record Optional Field 1, either in the initial Title IIC (grant 16) Object Assessment activity assignment or the first employment/training or services activity under Title IIC (grant 16) provided thereafter.

SDAs with programs to be considered for this incentive award with less than 15 terminations during PY96 must notify the Commission. The Commission will determine eligibility for the incentive award by considering the number of terminations from the Model Out-of-School Youth program in relation to the total number of out-of-school youth terminations.

SDAs meeting the criteria may submit an application for Model Out-of-School Youth incentive funds to the Department not later than July 31, 1997. An SDA's application will provide a brief program description, the total number of participants, the number of terminees, the number of positive terminations, and detail which of the six criteria have been met.

For serving JOBS participants, the minimum qualifying performance levels are twice the incident of JOBS participants in the poverty population, and serving AFDC recipients at rates at least as high as their incidence in the eligible poverty population. The percentage of JOBS participants served shall be calculated as the number of terminees (adult and youth) who were JOBS participants expressed as a percentage of all terminees. (See Table 2).

For the Adult High Wage Placement Incentive, the minimum qualifying performance level is the Family Hourly Wage defined in the Smart Jobs Act, adjusted for regional variations. The placement must be for employment of at least 20 hours per week. (See Table 2). Allocation of Five Percent Incentive Funds

Ten percent of the 5% incentive funds will be set aside for the Adult High Wage Placement incentive. Maximum potential SDA shares of the remaining 5% incentive funds will be proportionate to the SDA share for PY96, of the State's Title IIA and Title IIC allocation. Funds not needed for performance against the Serving JOBS Participants Standard will be divided evenly between the Model Out-of-school Youth Standard and the Adult Employer-assisted Benefits Standard.

If the incentive awards total is less than the total amount allocated for incentives, the balance will be prorated by award share, as additional incentive grant funds, to those SDAs eligible for an incentive award. Total incentive awards will not exceed the total amount allocated for incentives (not less than 67% of the Title IIA and IIC 5% allocation). Not more than 25% of the total incentive funds distributed will be for State standards. Eligibility/Special Restrictions

If less than 65% of an SDA's Title IIA participants are hard-to-serve, as defined by DOL, the SDA will be ineligible for incentive grants based on performance during PY96.

If less than 65% of an SDA's Title IIC participants are hard-to-serve, as defined by DOL, the SDA will be ineligible for incentive grants based on performance during PY96.

If an SDA fails three or more of the six DOL performance Standards it will be ineligible for incentive grants based on performance during that year. Weighting

For PY96, the following ten performance criteria are weighted/ranked equally at 10% each: Adult follow-up employment rate, Adult follow-up weekly earnings, Adult welfare follow-up employment rate, Adult welfare follow-up weekly earnings, Youth entered employment rate, Youth employability enhancement rate, Model out-of-school youth programs having a demonstrated record of success, Adult Employer-assisted Benefits rate, Adult High Wage Placements, and Serving JOBS participants at rates exceeding incidence in eligible population. Distribution Mechanism

For the DOL performance standards, serving JOBS participants standard, and model out-of-school youth standard, two funding tiers will be included in the PY96 policy, allowing SDAs the opportunity to increase their incentive award for higher performance levels. For the DOL performance standards, serving JOBS participants standard, and model out-of-school youth standard, 85% and 15% of the 5% incentive funds will be allocated to Tiers I and II, respectively.

To qualify for funds in a given tier, the DOL performance standards must be exceeded by the following required performance levels: Tier I: above the adjusted 50th percentile of national performance Tier II: above the adjusted 65th percentile of national performance

The degree by which the serving JOBS participants standard must be exceeded to qualify for funds in a given tier are as follows: Tier I: serving JOBS participants at rates greater than twice their incidence in the eligible poverty population. Tier II: serving JOBS participants at rates greater than three times their incidence in the eligible poverty population.

For the model out-of-school youth standard: Tier I: the SDA must meet at least four of the six requirements, and serve at least 51% out-of-school youth. Tier II: the SDA must meet five or more of the six requirements, and serve at least 51% out-of-school youth. SDAs which exceed their adjusted Adult Employer-assisted Benefits rate will receive the full amount available to the SDA for this standard.

The funds set aside for performance on the State Adult High Wage Placement Standard will be divided among SDAs based on their proportionate share of all adult high wage placements.

All inquiries concerning these performance standards should be directed to each SDA's assigned Program Representative at (512) 936-0345.

Issued in Austin, Texas, on June 20, 1996.  
9609032  
Esther Hajdar

Director of Legal Services  
Texas Workforce Commission  
Filed: June 24, 1996

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As authorized by the Texas Labor Code §301.061 and §302.021, and pursuant to state Job Training Partnership Act (JTPA) Rules 40 TAC §805.161, and §805.162, the Texas Workforce Commission (the Commission) provides notice of the Program Year 1996 Performance Standards and Goals for Title III JTPA programs. Section 106 of JTPA directs the Secretary of Labor to establish performance standards for dislocated worker programs. For Program Year 1996, the Secretary's standard for Title III is the Entered Employment Rate. Governors have the option of setting a measure for average wage at placement. The State of Texas adopted this wage goal as well as one additional performance measure.

The performance measures for the Title III program are as follows: Entered Employment Rate Standard-total number of individuals who entered employment at termination, excluding those who were recalled or retained by the original employer after receipt of a layoff notice, divided by the total terminations excluding those who were recalled or retained by the original employer after receipt of a layoff notice. The departure point is 72%. Average Wage at Placement Goal - Average hourly wage for all participants placed. The departure

point is \$9.40. Employment Rate at Follow-up Goal - The number of follow-up survey respondents who were employed during the 13th week after termination divided by the total number of respondents. The departure point is 78%.

Additionally, the Texas Council on Workforce and Economic Competitiveness retained the Minimum Expenditure Level of 85%. Sub-state areas (SSAs) must expend at least 85% of their annual allocation to avoid deobligation of funds.

All inquiries concerning these performance standards should be directed to each SSA's assigned EDWAA Specialist at (512) 936-0345.

Issued in Austin, Texas, on June 20, 1996.

9609031

Esther Hajdar

Director of Legal Services

Texas Workforce Commission

Filed: June 24, 1996

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# *Texas Register*

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